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THE OFFICIAL MONTH IN REVIEW

PRESIDENT Quirino on August 1 received a six-man committee from both houses of the Congress, who officially informed him of the opening of the special ten-day Congressional session.

On the same day the President, accompanied by Vice-President Fernando Lopez and members of the Cabinet, motored to the North Cemetery to pay homage to the late President Quezon, on his sixth death anniversary. The President also visited the tombs of the late President Manuel Roxas and that of Mrs. Aurora Aragon-Quezon.

In the afternoon, the President delivered his message before the special session of Congress at the Legislative building. [*See* HISTORICAL PAPERS AND DOCUMENTS *for full text of the President's message.*]

PRESIDENT Quirino paid tribute to the work of the Y.M.C.A. in the Philippines in building up the Filipino youth for clean thinking and living during a luncheon in Malacañan on August 2 in honor of Mr. and Mrs. E. S. Turner. Turner founded the Y.M.C.A. in the Philippines and led its activities in the past 40 years.

SPEAKING briefly during the ceremony at the newly rehabilitated Pier 13, after he had received from U. S. Ambassador Myron M. Cowen the document formally transferring the pier to the Philippine government on August 3, President Quirino renewed the pledge of the Filipino people "to fight for democracy and freedom on the side of the United States and the other United Nations." The President said that more than the physical value of Pier 13 to the Philippines is the "moral value" in terms of American goodwill and friendship which will leave a permanent heritage to our people."

SECRETARY of Education Prudencio Langcauon opened on August 3, the first of a series of broadcasts entitled, "The Government Reports," sponsored by Malacañan's Office of Public Information in cooperation with Station DZFM. The government report series are broadcast on Mondays and Thursdays at 6:45 p.m. with Department secretaries and key personnel of the government as speakers.

DURING its meeting on August 4, the Cabinet ruled that alien flour importers who have been in the business for a long time should not be discriminated against and should be given a fair share of the trade. The Cabinet made it clear, however, that the P.R.A.T.R.A. would be acting in consonance with the national policy if Filipino businessmen were given preferences in the allocation of new flour quotas.

A DIRECTIVE was issued by the President on August 4 requiring all property throughout the country to be reassessed as close as possible to actual market value for tax-levying purposes. It was estimated that revenue from real property taxes after reassessment would double or treble collections under the old assessment values.

THE President honored with a luncheon Randolf Churchill, son of the British wartime Prime Minister of England, on August 5. Young Churchill visited Manila on his way to Korea as a war correspondent. The next day the President took time out of his official duties and motored to Barrio Bayanbayanan, some 30 kilometers east of Manila, to visit the orphan-inmates of Boys Town.

ON August 8, the President issued Administrative Order No. 129 creating a committee composed of the Secretary of Finance as chairman, and the Auditor General and the Budget Commissioner as members, to screen and process all papers affecting the release of lump sums for special purposes.

IN the Cabinet meeting held on August 8, measures affecting the country's preparedness for emergency were adopted, namely: (1) Favorable recommendation to Congress of a legislation to increase from ₱1,000 to ₱3,000 the amount payable by the Government to heirs of enlisted men in the Armed Forces who might be killed in line of duty; (2) The requirement that shipment of abaca to foreign countries be subject to approval by the National Intelligence Coordinating Agency in order to prevent this war-critical material from being shipped to unfriendly countries; and (3) The waiving of certain technicalities in order to permit the United States government immediately to expand its airbase at Clark Field.

The Cabinet, moreover, decided in that meeting to direct the departments concerned to intensify the campaign against illegal slaughter of work animals.

THE anniversary of the First Cry of Balintawak, August 26 this year, was proclaimed as a special public holiday by President Quirino on August 9. President Quezon's birthday anniversary which falls on August 19 was also proclaimed a special holiday in a separate proclamation signed August 10.

THE right of claimants to property seized or the proceeds arising from the sale thereof by the Philippine Alien Property Administrator do not include relief for damages, if the property seized is non-income producing or if the property was converted into money but was left uninvested, according to the ruling handed down by Undersecretary of Justice Jose P. Bengzon on August 10, citing as basis of his opinion the "Trading with the Enemy Act" of 1917, particularly section 9 (*a*) thereof.

PRESIDENT Quirino issued on August 9, Executive Order No. 340 promulgating rules and regulations for the organization and training of Civilian Emergency Administration guards. Under the order, the mayor of each chartered city, municipality and municipal district shall organize C.E.A. guards in his respective jurisdiction. The C.E.A. guards shall serve without compensation. They shall however be entitled to free transportation in the performance of their duties and to free subsistence during periods of active service if food for the purpose are available in the city or municipality where they serve.

THE right of the Government to examine the books of charitable institutions and to impose taxes on their profits was upheld in an opinion handed down on August 9 by the Department of Justice. Charitable institutions are placed in the same category as educational institutions in that their incomes above the amount on which they used to operate their institutions are now liable to income tax under this ruling.

PRESIDENT Quirino issued two executive orders on August 14. Executive Order No. 342 authorizes the Price Administration Board to fix the ceiling prices for the different provinces by adding the transportation and handling charges to the basic ceiling prices for Manila and suburbs, and in accordance with the prescribed zones. Executive Order No. 343 sets ceiling prices for prime commodities such as powdered milk, coffee, tea, canned goods and certain building materials.

THE President addressed a communication to the Congress on August 14 certifying to the urgency of enacting the supplementary appropriation bill for the fiscal year 1950–1951, totaling ₱96,800,535. The supplementary appropriation bill calls for an outlay of ₱86,790,535 for ordinary expenses and ₱10,010,000 for extraordinary expenditures.

GEN. Douglas MacArthur's message was received at Malacañan on August 14 thanking President Quirino for putting the Philippine expeditionary force to Korea at the disposal of the U.N. commander. General MacArthur's radiogram was an acknowledgment of President Quirino's message on August 10 advising the General that Congress had passed a concurrent resolution in

favor of rendering every possible assistance to the U.N. forces in Korea and informing him that a Filipino regimental combat team consisting of 5,000 officers and men were being placed at his disposal.

THE Council of State on August 15 approved in principle several immediate and long-term economic measures to strengthen the government's fiscal position. The immediate economy measures include: (1) Further reduction, whenever possible, of government personnel to be carried out under the government reorganization scheme; (2) Utilization of personnel already in the government payroll for service in entities that may be organized as a result of the emergency, such as the Civilian Emergency Administration; and (3) Possible reduction in the outlay for the Bureau of Public Schools through slight increase in the maximum number of pupils in class.

IN the Cabinet meeting of August 18, Secretary of Agriculture and Natural Resources Placido L. Mapa was authorized to make available 7,000 cavans of palay for distribution to farmers of Central Luzon to replace the crops damaged during the recent floods.

IN a message issued on August 18 in commemoration of President Quezon's birthday, President Quirino said: "As we honor President Quezon, let us renew our pledge to carry on the great work which he auspiciously began, and reaffirm our devotion to the ideals of social justice and nationalism which he left as a legacy to our people."

AS a part of the year's observance of the 72nd birthday anniversary of the late President Quezon, the new Quezon museum of the rehabilitated National Library in the Legislative building was formally opened by President Quirino about 5 o'clock in the afternoon of August 19. The Quezoniana was formerly housed on the first floor of Malacañan Palace.

In the morning of the same day, the President delivered an extemporaneous speech at the Sunken Garden on the occasion of the cornerstone-laying ceremonies of the Roxas Liberty Park. In his speech the President called for a more intelligent and judicious exercise of the freedom of speech and renewed his appeal for national unity in the face of unsettled world conditions.

A REPORT containing 34 recommendations, including the consolidation of several government-owned and controlled corporations was submitted to the President during the Cabinet meeting on August 22, by Secretary Placido L. Mapa, in his capacity as acting head of the Department of Economic Coordination. Highlights of the recommendations include reduction of government enterprises from the present 24 to 16 corporations; the encouragement of private enterprise in the development of the country's resources, with the government assisting only in the financing of the projects; and the organization of development banks in rural areas.

During this Cabinet meeting the President ordered swift action in the prosecution of the parties responsible for the shooting affray in Bacolod, Negros Occidental, the previous week. The President also took occasion to counsel his Department Secretaries against being swayed by what appeared to be a form of hysteria in the matter of taking administrative action against government officials and employees suspected of irregularities.

FOLLOWING a brief conference with members of the Import Control Board on August 22, the President ordered the revision of procedures in the import control office so as to give the Import Control Commissioner wider discretion to act on import control license applications.

THE newly-constructed ₱300,000 edifice which will house the Children's T.B. Pavilion at the Quezon Institute of the Philippine Tuberculosis Society is one of the evidences of America's generosity to the Filipino people, President Quirino declared at the inauguration ceremonies that marked the turning over of the new building by War Damage Commissioner Frank C. Waring, on behalf of the U. S. Government, to the Philippine Government.

THE President appointed on August 28 the new members of the Board of Mechanical Engineers Examination. Those appointed were: Marciano S. Angeles, chairman; and Celso L. Preclaro and Teodoro T. Bacani, members.

IMMEDIATE release of ₱5 million for the rehabilitation of the mining industry as a means of boosting the nation's dollar income was recommended to President Quirino on August 28 by the National Economic Council. The N.E.C.'s recommendation came following receipt of requests for financial aid from war-ravaged mining concerns in the country. According to the recommendation, the ₱5 million would be allocated from the balance of the ₱200 million earmarked by the Central Bank for self-liquidating productive projects.

PRESIDENT Quirino shortly before noon on August 29, administered the oath of office to Undersecretary of Justice Jose P. Bengzon as acting secretary of justice. Also inducted in the Council of State room in Malacañan were Judge Felipe Natividad and Judge Felix Martinez as associate justices of the Court of Appeals.

PRESIDENT Quirino devoted practically the entire Cabinet meeting on August 29 to informing his Cabinet of the new measures he was taking to solve the peace and order problem. The new program, it was understood, envisages a nation-wide movement to harness the country's resources in order to crush outlawry once and for all. The President directed that the nature of the new program be withheld from publication until all the important details are put in final shape and until the implementation of the program is well under way.

PRESIDENT Quirino approved on August 30 the retirement of 24 officers from the active service of the Armed Forces of the Philippines, as recommended by Secretary of National Defense Ruperto K. Kangleon, pursuant to the provisions of section 1 (*b*) of Republic Act No. 340, which provides for compulsory retirement upon the completion of at least 30 years continuous satisfactory service or upon attaining 60 years of age with a minimum of 15 years continuous active service.

IN a radio address on August 30, the President appealed to the people to rally to the Government and unite to protect, their homes, their families, the schools for their children, the hospitals for the sick, and the churches where they worship. The President urged the people to unite and form batallions of peace—community assemblies, neighborhood associations, and barangays for peace. [*See* HISTORICAL PAPERS AND DOCUMENTS *in this issue.*]

ON August 31 five tax measures passed during the extended special session of Congress were signed by the President. They were House Bills Nos. 814, 868, 902, 1141 and 1363 which became Republic Acts Nos. 566, 567, 568, 569, and 570, respectively.

One of the Presidential callers on August 31 was F. Byrne Austin, executive director of the U. S. War Claims Commission who arrived from Washington recently to set up a claims office here for Filipino soldiers confined by the Japanese as prisoners of war. Mr. Austin disclosed that Filipino war prisoners will receive $1 for each day spent in Japanese concentration camps. Deadline for filing claims is March 1, 1951.

President Quirino Thursday night, August 31, accepted Secretary Ruperto K. Kangleon's resignation and simultaneously announced the appointment of Congressman Ramon Magsaysay to the Defense portfolio.

EXECUTIVE ORDERS, PROCLAMATIONS AND ADMINISTRATIVE ORDERS

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 339

DIRECTING THE ARMED FORCES OF THE PHILIPPINES TO SEIZE AND IMPOUND COMBAT MILITARY EQUIPMENT, SUCH AS TANKS, ARMORED CARS AND/OR THEIR SPARE PARTS, HALF-TRACKS, SCOUT CARS, WEASELS, DUCK TANKS, ALL OTHER ARMORED VEHICLES WHETHER ON WHEELS, TRACKS, OR AMPHIBIOUS, AND RADAR EQUIPMENT IN THE POSSESSION OF PRIVATE INDIVIDUALS.

WHEREAS, the present conditions of peace and order require that all measures be taken by the Government to eliminate all possible dangers to public peace and security;

WHEREAS, the possession by private individuals of combat military equipment, such as tanks, armored cars and/or their spare parts, half-tracks, scout cars, weasels, duck tanks, all other armored vehicles whether on wheels, tracks, or amphibious, and radar equipment posses the danger that the same may find their way or fall into unauthorized hands; and

WHEREAS, the only effective way by which this danger can be obviated is for the Government to impound these combat materials, thus preventing the possibility of their being used against the Government, particularly the Armed Forces of the Philippines.

NOW, THEREFORE, I, Elpidio Quirino, President of the Philippines, by virtue of the powers vested in me by the Constitution and laws of the Philippines, do hereby direct the Commanding General, Armed Forces of the Philippines, and/or his duly authorized representatives, to seize and impound combat military equipment, such as tanks, armored cars and/or their spare parts, half-tracks, scout cars, weasels, duck tanks, all other armored vehicles whether on wheels, tracks, or amphibious, and radar equipment in the possession of private individuals.

The Commanding General or any of his representatives shall, upon seizure of any such combat military equipment, issue a receipt therefor to the person from whom the same has been seized. He is further charged with the responsibility of seeing to it that said equipment is properly taken care of while in his custody and until such time as the same may be lawfully disposed of or returned to the owner.

Done in the City of Manila, this 7th day of August, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fifth.

ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 340

PROMULGATING RULES AND REGULATIONS FOR THE ORGANIZATION AND TRAINING OF CIVILIAN EMERGENCY ADMINISTRATION GUARDS.

By virtue of the powers in me vested by law, and upon the recommendation of the National Emergency Commission, I, Elpidio Quirino, President of the Philippines, do hereby promulgate the following rules and regulations for the organization and training of Civilian Emergency Administration Guards (CEA Guards).

1. The Mayor of each chartered city, municipality, and/or municipal district shall organize CEA Guards in his respective city, municipality, and/or municipal district. The CEA Guards are empowered to assist in the suppression of espionage and sabotage; to safeguard public utilities, bridges and manufacturing plants engaged in essential industries; to succor, aid and assist the populace in emergencies caused by fires, floods, earthquakes, typhoons, epidemics, air-raids or other forms of local or national disaster in order that injury to persons and property may be prevented. Members of Police, Traffic Control and Guard Duty Units, CEA Guards, during actual emergencies caused by war, sabotage, or during imminence of air-raids, are hereby invested with the powers of police officers in the performance of their duties. The use of the CEA Guards for any other purpose is prohibited.

2. The organization of the CEA Guards units shall be as prescribed herein.

3. The training of the units of the CEA Guards shall be conducted under the general supervision and direction of the Commanding Officer of the Philippine Constabulary and in strict accordance with the program of instruction to be prescribed by him.

4. The Mayor of each city, municipality, and/or municipal district is charged with the duty of, and is responsible for, recruiting an adequate number of men to form at full strength the units of the CEA Guards prescribed for his respective city or municipality, and controlling and operating them.

5. Enrollment in the CEA Guards shall be on a voluntary basis.

6. (*a*) Any able-bodied Filipino citizen, except as noted in (*b*) below, of not less than 18 and not more than 50 years of age, is eligible for enrollment in the CEA Guards.

(*b*) The following persons are exempted from enrollment in the CEA Guards:

1. Officers and enlisted men of the regular force and of the reserve forces carried on the rolls of reserve units of the Armed Forces of the Philippines, including officers and enlisted men of the Philippine Constabulary.

2. Members of all regularly organized police forces in provinces, chartered cities, municipalities and/or municipal districts.

3. Members of all regularly organized fire departments in chartered cities, municipalities, and/or municipal districts.

4. Field employees of the Bureau of Health, including District Health Officers, President of Sanitary Divisions, Sanitary Inspectors and Assistant Sanitary Inspectors.

5. Employees of the Bureau of Posts and the Bureau of Telecommunications.

6. Field employees of the Weather Bureau.

7. Personnel of the Coast Guard, Revenue Cutter and Lighthouse Inspection Services.

8. Physicians, nurses and attendants regularly employed in hospitals or puericultural centers.

9. Employees essential in the operation of public utilities, including employees of water supply, electric and telephone systems, and railroad, bus and steamship companies.

10. Field employees of the Philippine National Red Cross (PNRC) and social workers of the Social Welfare Commission and the President's Action Committee on Social Amelioration (PACSA).

7. Members of the CEA Guards shall serve without compensation. They shall, however, be entitled to free transportation when such is required in the performance of their duties if called into active service and to free subsistence during such period or periods of active service. Such transportation and subsistence shall be paid for by the chartered city, municipality, and/or municipal district for which the active service was rendered, if funds are available therefor.

8. Enrollment in the CEA Guards shall be for a period of one (1) year from the date of such enrollment, unless terminated sooner by competent authority.

9. At the time of enrollment, each member of the CEA Guards shall undergo physical examination and, if found fit, shall subscribe to the "oath of enrollment." The form for the oath of enrollment shall be prescribed by the Commanding Officer of the Philippine Constabulary.

10. In chartered cities, municipalities, and/or municipal districts, the organization of the Civilian Emergency Administration Guards (CEA Guards) shall be as follows:

(*a*) *Police, Traffic Control and Guard Duty Unit.*—This unit shall be under the supervision of the Chief of Police and shall have a strength based on the ratio of five (5) men for every one thousand (1,000) inhabitants.

(*b*) *Food and Fuel Administration Unit.*—This unit shall be under the supervision of the municipal agricultural Inspector, assisted

by the meat inspector and shall have a strength based on the ratio of fifteen (15) men for every one thousand (1,000) inhabitants.

(*c*) *Communication, Transportation, and Pol Control Unit.*—This unit shall be under the supervision of the municipal treasurer assisted by the postmaster, chief operator (or in his absence, by the Operator-in-Charge or postmaster-operator), and shall have a strength on the ratio of five (5) men for every one thousand (1,000) inhabitants.

(*d*) *Public Welfare and Morale Unit.*—This unit shall be under the supervision of the municipal physician assisted by the School Principal and will be organized into the following squads:

Squads	Strength
(1) 1st Aid Squads	Five (5) men for every one thousand (1,000) inhabitants.
(2) Publicity and Propaganda Teams	One (1) man for every five thousand (5,000) inhabitants.

(*e*) *Fire-Fighting Unit.*—This unit shall be under the supervision of the Chief of Fire Department. Where regular fire department do not exist, this unit shall be supervised by retired firemen or by civilians who have received special instruction in fire-fighting methods. This unit shall be organized into local squads, each squad being centered near military objectives, such as railway stations, docks, factories, and public buildings. The number of fire-fighting squads shall be determined by local authorities based on local conditions.

11. The duties and functions of the units enumerated in paragraph 10 shall be to help:

A. MOBILIZATION PHASE

(*a*) Maintain law and order.

(*b*) Control traffic.

(*c*) Safeguard from sabotage public utilities, bridges and manufacturing plants engaged in essential industries.

(*d*) Prepare and execute in due time the plans of the Director of Communication and Director of Transportation, National Emergency Commission, for the control and use of all communication, transportation and petroleum and oil lubricants (POL) Facilities.

(*e*) *First Aid Squads.*—Establish first aid stations and to train for emergency duties.

(*f*) *Fire-Fighting Unit.*—Establish and equip fire stations and sub-stations and to train for its war or emergency duties.

B. WAR OR EMERGENCY PHASE

(*a*) To continue with the duties and functions during the mobilization phase.

(*b*) To perform such other duties as the municipal Emergency Committee may direct.

(*c*) To cooperate with the Police, Traffic Control and Guard Duty Unit in the preservation of order.

(*d*) *The Rescue Squad of the Unit.*—To rescue persons trapped in fallen building and in debris from such building.

(*e*) *The Evacuation Squad of the Unit.*—To conduct the orderly evacuation of the community to prepared evacuation centers.

(*f*) *The Demolition and Repair Squads of the Unit.*—

1. To clear streets of wreckage and debris.
2. To fill bomb craters.
3. To assist in the repair of damaged utility mains (water, gas, electrical transmission, etc.) and sewers.
4. To cooperate with fire-fighting unit if it becomes necessary to use explosives in the control of a fire.

(*g*) To execute the plans for the control and use of communication, transportation and POL Facilities.

(*h*) To perform such other duties as the Municipal Emergency Committee may direct.

(*i*) *First Aid Squads.*—To render first aid to injured persons of their respective localities during bombings, shellings, or any other enemy action, and to evacuate to the nearest medical dispensary or hospitals those persons requiring further medical treatment.

(*j*) To control and extinguish fires, particularly those caused by incendiary bombs and shells.

12. Members of the CEA Guards assigned to the Police, Traffic Control and Guard Duty Units shall be armed and equipped as follows:

(*a*) Those assigned to Police and Traffic Control Duty, with night sticks and police whistles.

(*b*) Those assigned to Guard duty protecting public utilities, bridges and manufacturing plants engaged in essential industries shall be furnished police whistles and armed with revolvers or shotguns depending on the availability of such weapons as decided by the Commanding Officer of the Philippine Constabulary.

13. Members of the First Aid Units shall be provided with a white arm-band on which is superimposed a blue cross.

14. The CEA Guard units in municipalities and municipal districts may be called to active duty only by Provincial Governors and in chartered cities only by the mayors thereof. However, when an emergency caused by war, sabotage, fire, flood, earthquake, typhoon, or air-raid is imminent, mayors of municipalities and municipal districts are authorized to call to active duty the Volunteer Guard Units in their respective municipalities or municipal districts the moment such emergency occurs. Whenever the mayor of a municipality or municipal district exercises such authority, he shall, in each instance, render without delay, a report of his action to the Provincial Governor stating his reason or reasons for exercising such authority.

Done in the City of Manila, this 9th day of August, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fifth.

ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 341

ESTABLISHING RULES AND REGULATIONS FOR THE QUALIFICATION OF INDUSTRIES FOR TAX EXEMPTION UNDER REPUBLIC ACT NO. 35.

Pursuant to the provisions of section 79(*b*) of the Revised Administrative Code and section 2 of Republic Act

No. 35, the following rules and regulations for the qualification of industries seeking exemption from the payment of all internal revenue taxes under section 1 of Republic Act No. 35, are hereby promulgated for the information and guidance of all concerned:

1. *What may be considered "new" industry.*—A "new" industry as used in Republic Act No. 35 shall be construed to mean the manufacture, processing or transformation of raw materials, either in form, utility or substance, by any industrial unit the production or manufacture of which has not been undertaken on a commercial scale in the Philippines subsequent to July 4, 1946. For purposes of this definition:

(1) An "industrial unit" is deemed to be any plant, factory, machine or machine assembly having a capacity for performing the major functions involved in the production of a manufactured product on a commercial scale.

(2) By production on a "commercial scale" is meant the production for sale in the market in the normal course of business, in quantities and at prices which justify the operation of an industrial unit as a going concern and with a reasonable degree of permanency.

2. *What may be considered "necessary" industry.*—The word "necessary" as used in Republic Act No. 35 shall be construed to mean an industry which is conducive to sound economic development and which promotes employment and raises the standard of living of the people. In determining whether an enterprise is "necessary" or not the Secretary of Economic Coordination shall take into account the number of such similar enterprises already in existence and their collective productive capacity relative to the size of the domestic and/or export demand for their product.

3. *When exemption shall begin.*—The benefits of four years exemption of "new and necessary" industries from the payment of all internal revenue taxes shall begin from the date of the application when approved by the Secretary of Finance but not later than the month during which such industry entered into the production stage.

4. *Who will determine.*—All applications for exemption from the payment of all internal revenue taxes under the provisions of Republic Act No. 35 shall be filed with the Secretary of Finance. The opinion of the Secretary of Economic Coordination shall be obtained on whether the industry complies with the requirements of Republic Act No. 35. For this purpose he shall avail himself of the facilities in the Department of Commerce and Industry, the Central Bank, the National Economic Council, and other agencies of the Government in determining from time to time whether a sufficient number of individual industries has been granted exemption in any one particular class or type of industry and whether any further grant of exemption would be in the interest of sound industrial policy. The Secretary of Finance shall base his certification on said findings.

5. *Who may apply for exemption.*—Any person, partnership, company or corporation who or which shall engage in a new and necessary industry and operating in the Philippines, may apply for exemption from the payment of all internal revenue taxes for a period of four (4) years from the date of the organization of such industry.

6. *What must be stated in the application.*—The application shall contain the following statements:

(*a*) The name or firm name; its address;
(*b*) Name of the owner or manager of the firm; its address;
(*c*) Nationality of the owner;
(*d*) Location of firm or factory;
(*e*) Capital invested. If partnership, company or corporation, state the names of the partners or stockholders, amount contributed, nationality and their addresses. State also if registered, the date and place of registration;
(*f*) If with a firm name or business name, the fact that it is registered in the Bureau of Commerce both as a business name and as a merchant; number and date of registration;
(*g*) Date when factory began operation;
(*h*) The name and description of the product or products whose exemption is applied for;
(*i*) Is the plant already in operation? State capacity per 8 working hours;
(*j*) If owned by foreigner, state alien registration number; and
(*k*) Other information necessary for the effective enforcement of this Act.

7. *Obligation to report.*—Any industry granted tax exemption under the provisions of Republic Act No. 35 shall report to the Secretary of Finance at the end of every fiscal year a complete list and a correct valuation of all real and personal property of its industrial plant or factory; shall file a separate income tax return; shall keep separately the accounting records relative to the industry declared tax exempt; shall keep such records and submit such sworn statements as may be prescribed from time to time by the Secretary of Finance;

8. *Revocation of tax exemption.*—The Secretary of Finance may revoke any tax exemption granted under this Act, when after investigation and hearing, it is established that:

(1) The grantee fails to comply with any of the obligations imposed by this Order and the regulations promulgated pursuant thereto;
(2) When the grantee discontinues production on a commercial scale for a period of more than thirty (30) days without the previous approval of the Secretary of Finance.

COMMON PROVISIONS

9. *Form of application.*—All applications shall be made upon forms duly prescribed by the Department of Finance for the purpose, and shall be accomplished in quadruplicate and sworn to before a notary public.

10. *Issuance of certificates of exemption.*—Upon receipt of the application by the Secretary of Finance, the date and time of receipt thereof shall be noted and if it appears upon physical inspection and examination that the factory

is exemptible under the law and regulations, a certificate of exemption may be issued.

11. *Duration of certificate.*—The certificate of exemption shall be in force for a period of four years from the date of the establishment of the factory.

12. *Fees.*—The following fees shall be collected for the qualification and issuance of certificate of exemption:

(*a*) For inspection fee	₱10.00
(*b*) For the issuance of a certificate of exemption	20.00

13. *Change of address.*—Any change of address of applicant, or applicant manager, or the change of location of the factory granted exemption shall be reported to the Secretary of Finance in writing, immediately upon change of address or location, otherwise the certificate will be revoked.

14. *Date of effectivity.*—This Executive Order shall take effect as of the date of its publication in the *Official Gazette.*

Done in the City of Manila, this 9th day of August, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fifth.

ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 342

DEFINING THE CEILING PRICES OF COMMODITIES FOR THE CITY OF MANILA AND SUBURBS, THE PROVINCES AND FOR OTHER PURPOSES.

By virtue of the powers vested in me by section 3 of Republic Act No. 509, entitled "An Act declaring national policy, authorizing the President of the Philippines for a limited period to fix ceiling prices of commodities and to promulgate rules and regulations regarding prices of commodities to effectuate such policy, and authorizing the appropriation of a certain sum for the purpose," and upon the recommendation of the Price Administration Board, I, Elpidio Quirino, President of the Philippines, do hereby order:

SECTION 1. The Price Administration Board is hereby authorized to fix the ceiling prices of commodities for the different provinces of the Philippines by adding the transportation and handling charges to the basic ceiling prices fixed for the City of Manila and suburbs in accordance with the zones herein established, as follows:

(*a*) *For Zone No. 1* comprising the provinces of Bataan, Batangas, Bulacan, Cavite, Cebu, Iloilo, Laguna, Mindoro (Oriental), Pam-

panga, Quezon, Rizal, Tarlac and Zambales, ₱0.01 per pound or fraction thereof.

(*b*) *For Zone No. 2* comprising the provinces of Albay, Antique, Bohol, Camarines Norte, Camarines Sur, Capiz, Catanduanes, La Union, Leyte, Marinduque, Masbate, Mindoro (Occidental), Negros Occidental, Negros Oriental, Nueva Ecija, Pangasinan, Romblon, Samar and Sorsogon, ₱0.02 per pound or fraction thereof.

(*c*) *For Zone No. 3* comprising the provinces of Augsan, Basilan, Davao, Ilocos Sur, Lanao, Misamis Occidental, Misamis Oriental, Mountain Province, Nueva Vizcaya, Surigao and Zamboanga, ₱0.03, per pound or fraction thereof.

(*d*) *For Zone No. 4* comprising the provinces of Abra, Bukidnon, Cagayan, Cotabato, Ilocos Norte, Isabela, Palawan and Sulu, ₱0.04 per pound or fraction thereof.

(*e*) *For Zone No. 5* comprising the Province of Batanes, ₱0.05 per pound or fraction thereof.

SEC. 2. This Order shall take effect upon its promulgation.

Done in the City of Manila, this 14th day of August, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fifth.

ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 343

FIXING THE CEILING PRICES OF COMMODITIES AND FOR OTHER PURPOSES

By virtue of the powers vested in me by section 3 of Republic Act No. 509, entitled "An Act declaring national policy, authorizing the President of the Philippines for a limited period to fix ceiling prices of commodities and to promulgate rules and regulations regarding prices of commodities to effectuate such policy, and authorizing the appropriation of a certain sum for the purpose," and upon the recommendation of the Price Administration Board, I, Elpidio Quirino, President of the Philippines, do hereby order:

SECTION 1. The following essential commodities shall not be sold at more than the maximum selling prices for importers, wholesalers and retailers set opposite each:

FOODSTUFF (IMPORTED)

COMMODITY	Unit	Importer's or Producer's Price	Wholesale Price	Retail Ceiling Price
MILK POWDERED:				
Nido	12/1#	₱18.80/cs.	₱20.00/cs.	₱1.80/ea.
Nespray	12/1#	18.80/cs.	20.00/cs.	1.80/ea.
Golden State	12/1#	16.05/cs.	17.05/cs.	1.55/ea.
Sanalac	12/1#	16.05/cs.	17.05/cs.	1.55/ea.

COMMODITY	Unit	Importer's Price	Wholesale Price	Retail Ceiling Price
BEVERAGES:				
Coffee Roasted:				
Ben Hur	24/1#	48.30/cs.	52.30/cs.	2.40/ea.
(LOCALLY PREPARED W/IMPORTED COFFEE BEANS) PACKED IN TIN:				
Rooster Brand	1–1b.	1.85/ea.	2.00/ea.	2.20/ea.
Alca Brand	1–1b.	1.85/ea.	2.00/ea.	2.20/ea.
King's Brand	1–1b.	1.85/ea.	2.00/ea.	2.20/ea.
TEA:				
Black Tender Leaf Tea Balls	2-doz./ctn. 8 ct.	2.75/doz.	2.95/doz.	0.28/ctn.
Black Tender Leaf Tea Balls	doz/ctn. 48 ct.	13.80/doz.	14.95/doz.	1.40/ctn.
Black Tender Leaf Tea Balls	100-pkg./ 100 ct.	21.30/M	23.15/M	0.05/2 tea balls
FISH CANNED:				
Sardines S & W Brand in Tomato Sauce, Oval	48/15-oz.	22.15/cs.	24.10/cs.	0.55/ea.
Sardines S & W Brand in Tomato Sauce, Oval	48/8-oz.	16.40/cs.	17.50/cs.	0.40/ea.
Sardines, Luneta Brand in Tomato Sauce, Oval	48/8-oz.	15.50/cs.	16.80/cs.	0.39/ea.
Sardines all other Brand in Tomato Sauce, Oval	48/8-oz.	13.45/cs.	14.60/cs.	0.35/ea.
Sardines in Tomato Sauce Tall Round Tin (Buffet)	48/8-oz.	10.85/cs.	11.80/cs.	0.28/ea.
Sardines in Tall Round Tin	100/5-oz.	19.15/cs.	20.80/cs.	0.23/ea.
FLOUR:				
Softasilk Cake Flour	12/44-oz.	11.25/cs.	12.25/cs.	1.15/ea.
Gold Medal Enriched Flour	25/2#	10.90/cs.	11.85/cs.	0.53/ea.
Gold Medal Enriched Flour	10/5#	9.70/cs.	10.50/cs.	1.18/ea.
Gold Medal Enriched Flour	5/10#	9.30/cs.	10.10/cs.	2.25/ea.
BAKING POWDER:				
Royal Brand	16-doz./2-oz.	2.60/doz.	2.80/doz.	0.25/ea.
Royal Brand	4-doz./8-oz.	5.40/doz.	5.85/doz.	0.55/ea.
Fleischmanns Brand	4/10#	19.50/cs.	21.20/cs.	5.95/ea.
Crescent Brand	6/10#	25.90/cs.	28.00/cs.	5.20/ea.
Fleischmanns Dry Yeast	24/2#	65.30/cs.	67.95/cs.	3.00/ea.
DAIRY PRODUCTS:				
Red Shield Fresh Butter (USA)	60/1#	102.25/cs.	111.15/cs.	2.07/1#
DAIRY PRODUCTS:				
Golden State Grade AA Fresh Butter (U.S.A.)	60/1#	111.90/cs.	121.65/cs.	2.27/1#
Golden State American Process Cheese (U.S.A.)	6/5#	31.15/cs.	33.80/cs.	6.30/5#
Golden State Swiss American Process Cheese (U.S.A.)	6/5#	33.40/cs.	36.30/cs.	6.78/5#
Dairyherd Australian Pure Greamery Butter in tin	48/12-oz.	51.35/cs.	55.80/cs.	1.30/1#
Dairy Australian Processed Cheddar Cheese in tin	48/12-oz.	33.80/cs.	36.70/cs.	0.85/ea.
OTHER PRODUCTS:				
Peanut Butter, S & W Brand	24/16-oz.	24.05/cs.	27.85/cs.	1.35/bottle
Peanut Butter, S & W Brand	24/8-oz.	12.80/cs.	14.40/cs.	0.70/bottle
Coffee (Raw) Beans 2/3's	Bag/132#	118.10/bag	128.35/bag	2.40/kilo

CONSTRUCTION MATERIALS (IMPORTED)

COMMODITY	Unit	Wholesale Price	Retail Ceiling Price
GALVANIZED IRON SHEETS			
Gauges and Sizes:			
Gauge No. 30 × 32" × 6' Corr.	Sheet	₱3.38	₱3.75
" 30 × 32" × 7' "	"	3.94	4.37
" 30 × 32" × 8' "	"	4.50	5.00
" 30 × 32" × 9' "	"	5.07	5.63
" 30 × 32" × 10' "	"	5.63	6.25
" 30 × 3' × 8' Plain	"	4.50	5.00
Gauge No. 28 × 32" × 6' Corr.	"	3.74	4.15
" 28 × 32" × 7' "	"	4.37	4.85
" 28 × 32" × 8' "	"	5.00	5.55
" 28 × 32" × 9' "	"	5.63	6.25
" 28 × 32" × 10' "	"	6.26	6.95
" 28 × 3' × 8' Plain	"	5.00	5.55

COMMODITY	Unit	Wholesale price	Retail ceiling price
Gauge No. 26 × 32″ × 6′ Corr.	”	4.05	4.50
” 26 × 32″ × 7′ ”	”	4.73	5.25
” 26 × 32″ × 8′ ”	”	5.40	6.00
” 26 × 32″ × 9′ ”	”	6.08	6.75
” 26 × 32″ × 10′ ”	”	6.75	7.50
” 26 × 3′ × 8′ Plain	”	5.40	6.00
Gauge No. 24 × 32″ × 6′ Corr.	”	5.04	5.60
” 24 × 32″ × 7′ ”	”	5.85	6.50
” 24 × 32″ × 8′ ”	”	6.75	7.50
” 24 × 32″ × 9′ ”	”	7.56	8.40
” 24 × 32″ × 10′ ”	”	8.42	9.35
” 23 × x′ × 8′ Plain	”	6.75	7.50
ALUMINUM SHEETS (U.S.A.):			
Sizes:			
Gauge No. .016 × 26″ × 6′ Corr.	Sheet	2.95	3.25
” .016 × 26″ × 7′ ”	”	3.42	3.80
” .016 × 26″ × 8′ ”	”	3.78	4.20
” .016 × 26″ × 9′ ”	”	4.50	5.00
” .016 × 26″ × 10′ ”	”	4.92	5.47
” .016 × 26″ × 12′ ”	”	5.85	6.50
DURALMIN (ALUMINUM) SHEETS: (JAPANESE)			
Sizes:			
Gauge No. .019 × 26″ × 6′ Corr.	Sheet	2.95	3.25
” .019 × 26″ × 7′ ”	”	3.42	3.80
” .019 × 26″ × 8′ ”	”	3.78	4.20
” .019 × 26″ × 9′ ”	”	4.50	5.00
” .019 × 26″ × 10′ ”	”	4.92	5.47
GALVANIZED IRON ROOFING NAILS:			
Sizes:			
1-1/2″ × 6 BWG	Kilo	0.90	1.00
2″ × 8 BWG	”	0.90	1.00
GALVANIZED PLAIN WIRE-100-Lbs. ROLL:			
Sizes:			
No. 6/8	Roll	20.25	22.50
No. 10	”	20.70	23.00
No. 12	”	22.50	25.00
No. 14	”	23.40	26.00
No. 16/17	”	24.30	27.00
GALVANIZED PLAIN WIRE-100-Lbs. ROLL:			
Sizes:			
No. 18/19	Roll	₱24.30	₱27.00
No. 20	”	25.20	28.00
No. 22	”	36.00	40.00
REINFORCING MILD STEEL BARS (COMMERCIAL QUALITY) PLAIN ROUND, ROUND CORRUGATED, SQUARE AND SQUARE DEFORMED:			
Sizes:			
3/8″ × 30′ to 40′	Kilo	0.27	0.30
3/4″ × 30′ to 40′	”	0.26	0.29
5/8″ × 30′ to 40′	”	0.26	0.29
1/2″ × 30′ to 40′	”	0.26	0.29
7/8″ × 30′ to 40′	”	0.26	0.29
1″ × 30′ to 40′	”	0.25	0.28
MACHINE BOLTS AND NUTS:			
Belgian:			
Sizes;			
1/2″ × 7″ to 10″	Kilo	0.58	0.65
5/8″ × 8″ to 16″	”	0.57	0.60
U.S.A.			
Sizes:			
1/2″ × 7″ to 10″	”	0.80	0.90
3/4″ × 5″ to 7″	”	0.63	0.70
METAL LATH: RED TOP PAINTED COPPER—			
Sizes:			
24″ × 96″ (1.75#/sq. yd.)	Each	1.53	1.70
27″ × 96″ (2.5#/sq. yd.)	”	1.90	2.10
REINFORCING MILD STEEL FLAT BARS:			
Sizes:			
2-1/2″ × 1/4″ × 19/21′	Kilo	0.28	0.31
2″ × 3/8″ × 19/21′	”	0.28	0.31

COMMODITY	Unit	Wholesale price	Retail ceiling price
REINFORCING MILD STEEL ANGLE BARS:			
Sizes:			
3/4" × 3/4" × 1/8"	Kilo	0.33	0.37
1" × 1" × 1/8"	"	0.32	0.35
1" × 1" × 3/16"	"	0.32	0.35
REINFORCING STEEL BARS, PLAIN ROUND, ROUND CORRUGATED, SQUARE AND SQUARE DEFORMED, CONFORMED U.S.A. STANDARD SPECIFICATION, NEW BILLET STEEL ASTM A–15–39:			
Sizes:			
3/8" × 30' to 40'	Kilo	0.33	0.37
3/4" × 30' to 40'	"	0.30	0.33
5/8" × 30' to 40'	"	0.30	0.33
1/2" × 30' to 40'	"	0.27	0.30
7/8" × 30' to 40'	"	0.26	0.29
1" × 30' to 40'	"	0.25	0.28
PLUMBING MATERIALS AND SUPPLIES: WATERCLOSETS—			
Special Class:			
F-2030 "Standard" K-3655EB "Kohler" Syphon Jet Close-Coupled White V.C. Complete with white seat and cover and 3/8" C. P. Supply Pipe	Set	153.00	170.00
First Class:			
K-3705 "Kohler" F-2100 "Standard" S-42 "Richmond" Closed coupled Reverse Trap White V.C. complete with white seat cover and C. P. Supply Pipe	Set	90.00	100.00
K-3715 "Kohler" F-2115 "Standard" Closed coupled Washdown White V.C. complete with white seat and cover and 3/8" C. P. Supply Pipe			
K-3750 "Kohler" F-2186 "Standard" S-40 "Richmond" Washdown Low Tank, Elbow Type, White V.C. complete with white seat and cover 3/8" N. P. Supply to floor	Set	81.00	90.00
Second Class:			
High Watercloset Combination Complete with fittings	Set	69.20	76.90
LAVATORIES—			
Special Class:			
F-1158ST "Standard" K-1600A "Kohler" 22" × 18" White VC Complete W/C.P. Combination Supply and Pop-up drain fitting and 1¼" C.P. P-trap and C.P. Legs with Towel Bar	Set	144.00	160.00
First Class:			
P-3865 "Standard" K-2830 "Kohler" 20" × 18" Cast Iron White Enamel Complete W/C.P. Compression Lavatory faucets and 1¼" S.N. P-trap with P.O. Plug and China and Rubber stopper	Set	59.00	66.10
P-4205 "Standard" K-2880 "Kohler" 17" × 19" C.I. White enameled, Complete W/C.P. Compression Lavatory faucets and 1¼ S.N. P-trap W/P.O. Plug and Chain and rubber stopper	Set	58.85	65.40
KITCHEN SINKS—			
First Class:			
Complete W/fitting K-5570 Strainer Size: 42" × 25"	Set	147.50	163.90
Second Class:			
Enamel Iron AR Sink W/K-9107 Strainer			
Sizes: 24" × 16"	Set	31.50	35.00
30" × 18"	"	39.60	44.00
GALVANIZED PIPES—			
Sizes in Diameter:			
1/2" × 21'	Per length	4.95	5.50
3/4" × 21'	" "	6.75	7.50

COMMODITY	Unit	Wholesale price	Retail ceiling price
Sizes in diameter:			
1" × 21'	Per Length	0.95	11.05
1-1/4" × 21'	" "	13.50	15.00
1-1/2" × 21'	" "	14.40	16.00
2" × 21'	" "	21.35	23.70
GALVANIZED FITTINGS:			
Elbows 1/2" 90 deg.	Each	0.32	0.35
" 3/4" "	"	0.42	0.45
" 1" "	"	0.55	0.62
" 1-1/4" "	"	1.00	1.10
" 1-1/2" "	"	1.15	1.30
" 2" "	"	1.50	1.65
1/2" Street	"	0.43	0.48
Nipples 1/2" × 4	"	0.19	0.21
Nipples 1/2" × 3	"	0.16	0.18
Tees 1/2"	"	0.43	0.48
Tees 3/4"	"	0.60	0.67
Tees 1"	"	0.80	0.88
Tees 1-1/2"	"	1.55	1.70
Tees 2"	"	1.98	2.20
SOIL PIPES AND FITTINGS:			
Sizes:			
2" × 5' SH	Each	5.40	6.00
4" × 5' SH	"	8.80	9.80
2" × 1/4" Bend	"	1.45	1.60
4" × 1/4" "	"	2.70	3.00
2" × 1/8" "	"	1.30	1.45
4" × 1/8" "	"	2.25	2.50
2" × San Tees	"	2.00	2.20
4" × San Tees	"	3.80	4.20
4" × 2" San Tees	"	2.70	3.00
2" Y's	"	1.85	2.05
4" × 2" Y's	"	2.70	3.00
2" P Traps	"	3.25	3.60
6" SH	"	17.25	19.20
2" DH	"	5.95	6.60
4" DH	"	9.15	10.20
6" DH	"	18.60	20.65
6" × 1/8 Bend	"	3.75	4.15
2" DH (Ftgs.)	"	1.45	1.60
4" DH (Ftgs.)	"	2.10	2.30
4" × 4" Y's	"	3.80	4.20
6" × 4" Y's	"	6.45	7.15
6" × 6" Y's	"	8.65	9.60
WATER METER:			
With Straight Copper Connections—			
Sizes:			
1/2" Diameter	Each	38.00	42.00
3/4" "	"	58.50	65.00
1" "	"	81.00	90.00
PLAIN WHITE GLAZE TILES:			
Size:			
6" × 6" × 1/4" (Wall)	Each	0.24	0.27
CORPORATION COCK:			
Sizes:			
1/2" (Brass)	Each	2.45	2.70
3/4" "	"	3.55	3.95
1" "	"	5.30	5.90
BUILDING BOARDS:			
Doughlas Fit Plywood (U.S.A.)			
Sizes:			
1/4" × 4' × 8'	Each	7.90	8.75
3/8" × 4' × 8'	"	10.40	11.55
1/2" × 4' × 8'	"	12.85	14.25
IVORY CANEX INSULATION BOARD:			
Sizes:			
1/2" × 4' × 8'	Each	6.55	7.30
5/16" × 4' × 8'	"	5.55	6.20
HOMOSOTE WALLBOARD:			
Size:			
1/2" × 4' × 8'	Each	8.30	9.20

COMMODITY	Unit	Wholesale price	Retail ceiling price
CHAPCO BOARD:			
Size:			
1/8" × 4' × 8'	Each	5.85	6.50
SIMPSON INSULATION BOARD:			
Sizes:			
3/8" × 4' × 8'	Each	4.95	5.50
1/2" × 4' × 8'	"	6.00	6.70
FIR-TEX WHITE KOTE:			
Sizes:			
3/8" × 4' × 8'	Each	5.25	5.80
1/2" × 4' × 8'	"	6.60	7.35
ASBESTOS CEMENT BOARD:			
Size:			
3/16" × 4' × 8'	Each	4.90	5.45
OTHER MATERIALS:			
Cement (Japanese) bag of 45 kilos	Bag	3.15	3.50

SEC. 2. The ceiling prices for Importers, Wholesalers and Retailers of Sanka Coffee, fixed in Executive Order No. 331, is hereby revised as follows:

Commodity	Unit	Importer's Price	Wholesale Price	Retail Ceiling Price
COFFEE ROASTED:				
Sanka	12/1#	₱26.95/cs.	₱29.15/cs.	₱2.70/ea.

SEC. 3. Any commodity not included in this list the size and specification of which are the same as those of the foregoing shall have the same ceiling price.

SEC. 4. An importer who sells to a wholesaler any of the construction materials specified in this Order, for which no importer's prices are fixed herein, shall allow the latter a minimum margin of profit equivalent to 10 per cent over and above the landed cost of the commodity sold.

SEC. 5. This Order shall take effect upon its promulgation.

Done in the City of Manila, this 14th day of August, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fifth.

ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION NO. 199

AMENDING PROCLAMATION NO. 134, AS AMENDED BY PROCLAMATION NO. 151, BY PUBLISHING THE LATEST VALUES OF CERTAIN FOREIGN CURRENCIES FOR PURPOSES OF THE ASSESSMENT AND COLLECTION OF CUSTOMS DUTIES.

Pursuant to the authority vested in me by Republic Act No. 77, and upon recommendation of the Secretary of Finance, I hereby amend Proclamation No. 134, dated July 19, 1949, as amended by Proclamation No. 151, dated October 15, 1949, by publishing the latest values of certain foreign currencies for purposes of the assessment and collection of customs duties, as follows:

Country	Unit	Value in Philippine currency	Equivalent in U.S. currency
Italy	Lira	.0032	.0016
Palestine	Pound Sterling	5.60	2.80

In witness whereof, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 4th day of August, in the Year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fifth.

[SEAL] ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION NO. 200

DECLARING AUGUST 26, 1950 A SPECIAL PUBLIC HOLIDAY

WHEREAS, the "First Cry of Balintawak," which took place on August 26, 1896, marked the beginning of the revolution against Spain and now stands as a landmark in our history; and

WHEREAS, it is fitting and proper that said day be properly observed so that the significance of that historical event may be preserved in the memory of our people;

NOW, THEREFORE, in pursuance of the provisions of section 30 of the Revised Administrative Code, I, Elpidio Quirino, President of the Philippines, do hereby proclaim Saturday, August 26, 1950 a special public holiday.

Done in the City of Manila, this 7th day of August, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fifth.

[SEAL] ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION No. 201

FIXING THE DATE FOR THE BEGINNING OF THE CORPORATE EXISTENCE OF THE MUNICIPALITY OF BUENAVISTA, PROVINCE OF QUEZON.

By virtue of the power conferred upon me by section 3 of Republic Act No. 495, I, Elpidio Quirino, President of the Philippines, do hereby fix August 26, 1950, as the date for the beginning of the corporate existence of the municipality of Buenavista, Province of Quezon.

In witness whereof, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 7th day of August, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fifth.

[SEAL] ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION No. 202

AMENDING PROCLAMATION No. 198, DATED JULY 29, 1950 SO AS TO DECLARE SATURDAY, AUGUST 19, 1950 A SPECIAL PUBLIC HOLIDAY THROUGHOUT THE PHILIPPINES.

Proclamation No. 198, dated July 29, 1950, declaring Saturday, August 19, 1950, a special public holiday in Quezon Province and Quezon City, is hereby amended so as to declare Saturday, August 19, 1950, a special public holiday throughout the Philippines.

In witness whereof, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 9th day of August, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fifth.

[SEAL] ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION NO. 203

EXTENDING FOR TEN DAYS THE PERIOD OF THE SPECIAL SESSION OF THE CONGRESS OF THE PHILIPPINES AUTHORIZED UNDER PROCLAMATION NO. 196, DATED JULY 25, 1950.

WHEREAS, the special session of the Congress of the Philippines authorized under Proclamation No. 196 will expire at midnight of August 11, 1950; and

WHEREAS, the public interest requires that this special session be extended to consider and finish urgent legislative measures;

NOW, THEREFORE, I, Elpidio Quirino, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby extend for a period of ten days from August 12, 1950, the period of the special session of the Congress of the Philippines authorized under Proclamation No. 196, dated July 25, 1950, for the purpose of considering pending bills and other urgent legislative measures as the President may submit to it.

All persons entitled to sit as members of the Congress of the Philippines are requested to take notice of this proclamation.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 11th day of August, in the year of Our Lord, nineteen hundred and fifty, and of the independence of the Philippines, the fifth.

[SEAL]

ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION NO. 204

FURTHER EXTENDING FOR TWO DAYS THE PERIOD OF SPECIAL SESSION OF THE CONGRESS OF THE PHILIPPINES AUTHORIZED UNDER PROCLAMATION No. 196, DATED JULY 25, 1950, AS EXTENDED.

WHEREAS, the special session of the Congress of the Philippines called under Proclamation No. 196, dated July 25, 1950, as extended, will expire at midnight of August 23, 1950; and

WHEREAS, the public interest requires that this special session be further extended to consider and finish urgent legislative measures;

NOW, THEREFORE, I, Elpidio Quirino, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby further extend for two days from August 24, 1950, the period of the current special session of the Congress of the Philippines called under Proclamation No. 196, dated July 25, 1950, as extended by Proclamation No. 203, dated August 11, 1950, for the purpose of considering pending measures.

All persons entitled to sit as members of the Congress of the Philippines are requested to take notice of this proclamation.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 23rd day of August, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fifth.

[SEAL] ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION NO. 205

RESERVING FOR HOTEL SITE PURPOSES A CERTAIN PARCEL OF THE PUBLIC DOMAIN SITUATED IN THE CITY OF BAGUIO, ISLAND OF LUZON.

Upon the recommendation of the Secretary of Agriculture and Natural Resources and pursuant to the provisions of section 83 of Commonwealth Act No. 141, as amended, I hereby withdraw from sale or settlement and reserve for hotel site purposes, under the administration of the National Development Company, subject to private rights, if any there be, a cerain parcel of the public domain situated in the City of Baguio, Island of Luzon, and more particularly described in the Bureau of Lands plan Swo–19505, to wit:

"A parcel of land (lot No. 4 of plan S.W.O.–19505, being a portion of lot No. 100–new of plan Bsd–1311, situated in Residential Section A, City of Baguio, Mountain Province. Bounded on the N. by lot No. 114 of plan IR–261; on the NE. and E. by Luneta Cut Off Road (10 m. wide); on the SW. by lot No. 100–new of plan Bsd–1311 (Government Center Reservation); and on the W. by lots Nos. 126 and 128 (public land) and lot No. 115 of plan IR–261.

Beginning at a point marked "1" on plan, being N. 14° 55′ E., 462.46 meters more or less from concrete monument marked 'Happy' Baguio Townsite; thence S. 12° 31′ E., 22.10 m. to point 2; thence S. 17° 09′ E., 72.10 m. to point 3; thence S. 11° 21′ E., 39.95 m. to point 4; thence S. 3° 40′ E., 52.50 m. to point 5; thence S. 17° 16′ E., 41.99 m. to point 6; thence S. 19° 33′ E., 82.11 m. to point 7; thence S. 3° 39′ W., 71.97 m. to point 8; thence N. 31° 52′ W., 71.91 m. to point 9; thence N. 77° 24′ W., 103.56 m. to point 10; thence N. 3° 18′ W., 135.62 m. to point 11; thence N. 3° 18′ W., 64.65 m. to point 12; thence N. 3° 18′ W., 87.86 m. to point 13; thence E. 83.00 m. to point of beginning; containing an area of 34,762 square meters, more or less. All points referred to are indicated on the plan; and on the ground, are marked as follows: points 1 to 9 inclusive, by B.L. concrete monument, 15 cm. diam. x 60 cm.; and points 10 to 13, inclusive, by old corners; bearings true; declination 0° 32′ E.; date of survey, June 30 and July 11, 1947."

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 29th day of August, in the year of Our Lord nineteen hundred and fifty and of the Independence of the Philippines, the fifth.

[SEAL]

ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 128

PLACING THE PRESIDENTIAL GUARD BATTALION UNDER THE ADMINISTRATIVE AND OPERATIONAL CONTROL OF THE COMMANDING OFFICER OF THE PHILIPPINE CONSTABULARY.

By virtue of the powers vested in me by law, I, Elpidio Quirino, President of the Philippines, do hereby place the Presidential Guard Battalion under the administrative and operational control of the Commanding Officer of the Philippine Constabulary.

Administrative Order No. 127, dated July 26, 1950, is hereby amended accordingly.

Done in the City of Manila, this 3rd day of August, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fifth.

ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 129

CREATING A COMMITTEE TO ADVISE THE PRESIDENT ON ALL RELEASES OF FUNDS APPROPRIATED IN THE VARIOUS APPROPRIATION ACTS OTHER THAN THE GENERAL APPROPRIATION ACT FOR THE FISCAL YEAR 1951.

WHEREAS, the present condition of the finances of the Government require that a more effective control of releases of appropriated funds be exercised;

NOW, THEREFORE, I, Elpidio Quirino, President of the Philippines, by virtue of the provisions of Section 8 of Republic Act No. 563, do hereby create a committee consisting of the Secretary of Finance, as Chairman, and the Auditor General and the Commissioner of the Budget, as Members, to act upon all requests for releases of funds chargeable against the various appropriation acts, including the appropriations for special purposes in the General Appropriation Act for the current fiscal year, Republic Act No. 563, and to recommend to the President appropriate action thereon.

Cash advances and releases of cash chargeable against the appropriations for salaries and wages and sundry expenses appropriated under Republic Act No. 563 may be made without any need of action by the Committee herein constituted.

Done in the City of Manila, this 8th day of August, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fifth.

ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 130

AMENDING ADMINISTRATIVE ORDER NO. 32, DATED APRIL 12, 1947

By virtue of the powers vested in me by law, I, Elpidio Quirino, President of the Philippines, do hereby amend

the second paragraph of Administrative Order No. 32, dated April 12, 1947, to read as follows:

"In the fulfillment of their duties, the members of the Committee may appoint their respective representatives who are authorized to take, either collectively or individually, testimony or evidence with all the incidental powers provided for in section 580 of the Revised Administrative Code."

Done in the City of Manila, this 18th day of August, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fifth.

ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER No. 131

MODIFYING ADMINISTRATIVE ORDER NO. 126, DATED JULY 18, 1950, BY CHANGING THE DATE OF EFFECTIVITY OF THE REMOVAL OF MR. JUAN M. BARBA FROM OFFICE AS REGISTER OF DEEDS OF ILOCOS NORTE.

It having been brought to my attention that the last day of service with pay of Mr. Juan M. Barba, who was removed from office as register of deeds of Ilocos Norte effective August 12, 1949, under Administrative Order No. 126, dated July 18, 1950, violation of civil service rules and regulations and for abandonment of office, was August 16, 1949, said administrative order is hereby modified by considering Mr. Barba as having been separated from the service effective as of August 17, 1949.

Done in the City of Manila, this 28th day of August, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fifth.

ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 132

EXTENDING THE PERIOD WITHIN WHICH THE REORGANIZATION COMMISSION CREATED UNDER ADMINISTRATIVE ORDER No. 109, DATED FEBRUARY 28, 1950, SHALL SUBMIT ITS REPORT AND RECOMMENDATION.

WHEREAS, the Reorganization Commission created under Administrative Order No. 109, dated February 28, 1950, is required to submit its report and recommendation within six months from the issuance of said Order, that is, on or before August 31, 1950; and

WHEREAS, it appears that the Reorganization Commission needs more time for the preparation of its report and recommendation;

NOW, THEREFORE, I, Elpidio Quirino, President of the Philippines, by virtue of the powers vested in me by law, do hereby extend by sixty days the period within which the Reorganization Commission shall submit its report and recommendation to the President of the Philippines.

Done in the City of Manila, this 31st day of August, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fifth.

ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

REPUBLIC ACTS

Enacted during the First Session of the Second Congress, Republic of the Philippines, from January 23 to May 18, 1950

H. No. 67

[REPUBLIC ACT No. 491]

AN ACT CREATING THE MUNICIPALITY OF BAGAMANOC IN THE PROVINCE OF CATANDUANES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The barrios Quigaray, Hinipagan, Sukhan in the island of Panay; Lati, in the island of Lati; Bacac, Hinipaan, Bugao, Minaili and Bagamanoc of the municipality of Panganiban of the Province of Catanduanes, are separated from said municipality and constituted into a new municipality to be known as the municipality of Bagamanoc, with the seat of government at the present site of the barrio of Bagamanoc.

SEC. 2. The elective officials of the new municipality shall be appointed by the President of the Philippines and shall hold office until their successors shall have been elected and have qualified.

SEC. 3. This Act shall take effect upon its approval.

Approved, June 12, 1950.

S. No. 118

[REPUBLIC ACT No. 492]

AN ACT TO AMEND REPUBLIC ACT NUMBERED THREE HUNDRED SIXTY-EIGHT ENTITLED, "AN ACT TO FIX THE SALARIES OF PROVINCIAL GOVERNORS, PROVINCIAL TREASURERS, PROVINCIAL AUDITORS, DISTRICT HEALTH OFFICERS, AND PROVINCIAL ASSESSORS," SO AS TO INCLUDE DISTRICT ENGINEERS.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Section one of Republic Act Numbered Three hundred sixty-eight is hereby amended to read as follows:

"SECTION 1. The annual salaries of provincial governors, provincial treasurers, district engineers, provincial auditors, district health officers, and provincial assessors shall be as hereinbelow fixed:

"In first class A provinces: for provincial governors, eight thousand four hundred pesos; for provincial treasurers and district engineers, six thousand six hundred pesos; for provincial auditors and district health officers, five thousand seven hundred pesos; and for provincial assessors, four thousand eight hundred pesos.

"In first class B provinces: for provincial governors, seven thousand eight hundred pesos; for provincial treas-

urers and district engineers, six thousand three hundred pesos; for provincial auditors and district health officers, five thousand four hundred pesos; and for provincial assessors, four thousand five hundred pesos.

"In regular first class provinces: for provincial governors, seven thousand two hundred pesos; for provincial treasurers and district engineers, six thousand pesos; for provincial auditors and district health officers, five thousand one hundred pesos; and for provincial assessors, four thousand two hundred pesos.

"In second class provinces: for provincial governors, six thousand six hundred pesos; for provincial treasurers and district engineers, five thousand seven hundred pesos; for provincial auditors and district health officers, four thousand eight hundred pesos; and for provincial assessors, three thousand six hundred pesos.

"In third class provinces: for provincial governors, six thousand pesos; for provincial treasurers and district engineers, five thousand one hundred pesos; for provincial auditors and district health officers, four thousand five hundred pesos; and for provincial assessors, three thousand three hundred pesos.

"In fourth class provinces: for provincial governors, five thousand four hundred pesos; for provincial treasurers and district engineers, four thousand eight hundred pesos; for provincial auditors and district health officers, three thousand nine hundred sixty pesos; and for provincial assessors, three thousand one hundred twenty pesos.

"In fifth class provinces: for provincial governors, four thousand eight hundred pesos; for provincial treasurers and district engineers, four thousand two hundred pesos; for provincial auditors and district health officers, three thousand seven hundred twenty pesos; and for provincial assessors, three thousand pesos.

"*Provided*, That if after the salary of a provincial governor or a provincial treasurer or a district engineer or a provincial auditor or a district health officer or a provincial assessor has been increased by virtue of the provisions hereof, the province concerned incurs an overdraft in its general fund or engineering fund or the operating expenses thereof exceed the revenue collections, the President of the Philippines, upon recommendation of the proper department head shall reduce the salary of that official to the maximum rate fixed for the corresponding official in the next lower class of province."

SEC. 2. This Act shall take effect upon its approval.

Approved, June 12, 1950.

H. No. 135

[REPUBLIC ACT NO. 493]

AN ACT TO PROHIBIT THE USE OR CONFERRING OF MILITARY OR NAVAL GRADES OR TITLES BY OR UPON PERSONS NOT IN THE SERVICE OF THE ARMED FORCES OF THE PHILIPPINES OR THE PHILIPPINE CONSTABULARY, TO REGULATE THE WEARING, USE, MANUFACTURE

AND SALE OF INSIGNIAS, DECORATIONS AND MEDALS, BADGES, PATCHES AND IDENTIFICATION CARDS PRESCRIBED FOR THE SAID ARMED FORCES OR CONSTABULARY, AND FOR OTHER PURPOSES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Hereafter it shall be unlawful for any person or association of persons not in the service of the Armed Forces of the Philippines or the Philippine Constabulary to use, or confer upon himself or another who is not in the service of the said Armed Forces or Constabulary, any military or naval grade or title which is, or may hereafter be, prescribed by laws and regulations for the use of the Armed Forces or Constabulary: *Provided*, That the foregoing shall not be construed as prohibiting the use of such military or naval grades or title by personnel or persons now authorized by law and by the following persons:

(*a*) All veterans of any war when recognized by the Philippine or United States Government and only for the ranks for which they are recognized;

(*b*) Commissioned officers and personnel, retired or in active duty, of the Bureau of Coast and Geodetic Survey, of the quarantine service, and of the customs service;

(*c*) Commissioned and enlisted reservists including recognized guerrilla officers on inactive status when using their authorized grades for a purely military purpose;

(*d*) Trainees in the Armed Forces while undergoing any period of trainee instruction pursuant to law.

SEC. 2. Hereafter it shall be unlawful for any person not in the service of the Armed Forces of the Philippines or the Philippine Constabulary, except those excluded from the prohibition in section one of this Act, to use or wear the duly prescribed insignia, badge or emblem or rank of the members of the Armed Forces of the Philippines or the Philippine Constabulary, or any colorable imitation thereof: *Provided*, That the foregoing shall not be construed as prohibiting any person from using or wearing any military or naval insignia, badge or emblem of rank in any play-house or theater or in moving-picture films while actually engaged in representing therein a military or naval character not tending to bring discredit or reproach upon the Armed Forces of the Philippines, the Philippine Constabulary or the Bureau of Coast and Geodetic Survey: *Provided, further*, That the use or wearing of any military or naval insignia, badge or emblem of rank while engaged in representing a military or naval character as hereinabove described, shall be subject to supervision and regulation by the Secretary of National Defense. The phrase "duly prescribed insignia, badge or emblem of rank" shall, for the purposes of this Act, mean any insignia, badge or emblem of rank which is, or may hereafter be, prescribed by Congress, the Secretary of National Defense or the Chief of Constabulary.

SEC. 3. Hereafter the use, wearing, manufacture and sale of any medal or decoration, badge, insignia, patch, or identification card which has been, or may hereafter

be, authorized by Congress or prescribed or awarded by the President of the Philippines or the Secretary of National Defense for the members of the Armed Forces of the Philippines, or any colorable imitation thereof, is prohibited, except when authorized under such regulations as the Secretary of National Defense shall prescribe.

SEC. 4. Any person who confers upon himself or another any military or naval grade or title in violation of section one of this Act shall, upon conviction, be punished by a fine of not less than two thousand pesos and not exceeding five thousand pesos or by imprisonment for not less than two years and not exceeding five years, or both. Any person who violates any other provision of this Act shall, upon conviction, be punished by a fine of not less than one hundred pesos and not exceeding two thousand pesos, or by imprisonment for not less than one month and not exceeding two years, or both. In case the violation is committed by a corporation, the manager and all the members of the board of directors or governing body thereof, shall be liable individually in accordance with this section.

SEC. 5. All laws or portions thereof inconsistent with the provisions of this Act, are hereby repealed.

SEC. 6. This Act shall take effect upon its approval.

Approved, June 12, 1950.

H. No. 192

[REPUBLIC ACT NO. 494]

AN ACT GRANTING VICENTE CAÑETE A FRANCHISE FOR AN ELECTRIC LIGHT, HEAT AND POWER SYSTEM IN THE MUNICIPALITY OF MEDELLIN, CEBU.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Subject to the terms and conditions established in Act Numbered Thirty-six hundred and thirty-six, as amended by Commonwealth Act Numbered One hundred and thirty-two, and to the provisions of the Constitution, there is granted to Vicente Cañete, for a period of twenty-five years from the approval of this Act, the right, privilege, and authority to construct, maintain, and operate an electric light, heat and power plant for the purpose of generating and distributing electric light, heat, and/or power for sale within the municipality of Medellin, Province of Cebu: *Provided*, That the holder of the franchise herein granted shall start operation thereof within one and one-half years from the approval of said franchise if he is a new operator; and within six months if he is at present holder of a municipal franchise. Failure to comply with this requirement shall *ipso facto* cancel and void this franchise.

SEC. 2. It is expressly provided that in the event the Government should desire to maintain and operate for itself the plant and enterprise herein authorized, the grantee

shall surrender its franchise and will turn over to the Government all serviceable equipment therein, at cost.

SEC. 3. This Act shall take effect upon its approval.

Approved, June 12, 1950.

H. No. 83

[REPUBLIC ACT NO. 495]

AN ACT TO CREATE THE MUNICIPALITY OF BUENAVISTA IN THE PROVINCE OF QUEZON

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The barrios of Perez, Batabat, Bukal, Buenavista, Cabong Sur, Cadlit, Catulin, Del Rosario, Hagonghong, Ilayang Wasay, Ibabang Wasay, Lilukin, San Vicente, Siain, and Villa Aurora are separated from the municipality of Guinayangan, Province of Quezon, and constituted into a new and separate municipality, to be known as the municipality of Buenavista, Province of Quezon, which municipality shall have its seat of government in the former barrio of Perez.

SEC. 2. The municipal mayor, vice-mayor and councilors of the new municipality shall be appointed by the President of the Philippines, to hold office until their successors are elected and have qualified.

SEC. 3. The municipality of Buenavista shall begin to exist on the date fixed in a proclamation to said effect by the President of the Philippines and upon the appointment and qualification of its officers.

SEC. 4. This Act shall take effect upon its approval.

Approved, June 12, 1950.

H. No. 555

[REPUBLIC ACT NO. 496]

AN ACT TO CREATE THE MUNICIPALITY OF BITULOK IN THE PROVINCE OF NUEVA ECIJA

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The barrios of Bitulok, Bantug, Bitulok Saw Mill, Cuyapa, Macasandal, Pantok, Calumpang, Malinao, Tagumpay, Bugnan, Bagong Sicat, Ligaya, Calabasa, Bateria and Pintong Bagting are hereby separated from the municipality of Laur, Province of Nueva Ecija and constituted as an independent municipality to be known as the municipality of Bitulok in the Province of Nueva Ecija with the seat of the government in the barrio of Bitulok.

SEC. 2. The elective officials of the new municipality shall be appointed by the President of the Philippines and shall hold office until their successors shall have been elected and shall have duly qualified.

SEC. 3. This Act shall take effect upon its approval.

Approved, June 12, 1950.

H. No. 591

[REPUBLIC ACT NO. 497]

AN ACT GRANTING THE BUTUAN SAWMILL, INCORPORATED, A FRANCHISE FOR AN ELECTRIC LIGHT, HEAT AND POWER SYSTEM IN THE MUNICIPALITY OF NASIPIT, PROVINCE OF AGUSAN.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Subject to the terms and conditions established in Act Numbered Thirty-six hundred and thirty-six, as amended by Commonwealth Act Numbered One hundred and thirty-two, and to the provisions of the Constitution, there is granted to the Butuan Sawmill, Incorporated, for a period of fifty years from the approval of this Act, the right, privilege, and authority to construct, maintain, and operate an electric light, heat and power plant for the purpose of generating and distributing electric light, heat, and/or power for sale within the municipality of Nasipit, Province of Agusan: *Provided,* That the holder of the franchise herein granted shall start operation thereof within one and one-half years from the approval of said franchise, if he is not an actual operator; and within six months if he is already a holder of a municipal franchise. Failure to comply with this requirement shall *ipso facto* cancel and void the franchise.

SEC. 2. It is expressly provided that in the event the Government should desire to maintain and operate for itself the plant and enterprise herein authorized, the grantee shall surrender its franchise and will turn over to the Government all serviceable equipment therein, at cost, less reasonable depreciation.

SEC. 3. This Act shall take effect upon its approval.

Approved, June 12, 1950.

H. No. 603

[REPUBLIC ACT NO. 498]

AN ACT AUTHORIZING CITIES, MUNICIPALITIES AND PROVINCES TO PURCHASE AND/OR EXPROPRIATE HOME SITES AND LANDED ESTATES AND SUBDIVIDE THEM FOR RESALE AT COST, AND TO USE THEIR OWN FUNDS OR CONTRACT LOANS FOR THE PURPOSE, AMENDING FOR SUCH PURPOSES REPUBLIC ACT NUMBERED TWO HUNDRED AND SIXTY-SEVEN.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The title of Republic Act Numbered Two hundred and sixty-seven is amended to read as follows:

"An Act authorizing cities, municipalities and provinces to purchase and/or expropriate home sites and landed estates and subdivide them for resale at cost, and to use their own funds or contract loans for the purpose."

SEC. 2. Section one of Republic Act Numbered Two hundred and sixty-seven is amended to read as follows:

"SECTION 1. Cities, municipalities and provinces are authorized to purchase and/or expropriate home sites and landed estates within their respective jurisdictions and resell them at cost to residents of the said provinces, cities and municipalities, and to use their own funds or contract loans for the purpose from the Reconstruction Finance Corporation and the Philippine National Bank, both of which are authorized to grant such loans, and/or any other entity or person at a rate of interest not exceeding eight per cent *per annum*."

SEC. 3. Section two of Republic Act Numbered Two hundred and sixty-seven is amended to read as follows:

"SEC. 2. The landed estates or home sites so acquired shall be subdivided into lots not exceeding five hundred square meters each and sold on an installment plan not exceeding ten years, at the same rate of interest paid by the province, city or municipality for the loan used in acquiring the said landed estates or home sites, preference being given to Filipino *bona fide* occupants and to Filipino veterans, their widows, and their children.

"No such lot shall be sold to any person, who already owns a residential lot, and any sale made to such person shall be void.

"Before full payment of the home site has been made, title therein shall remain vested in the province, city or municipality concerned: *Provided*, That no such lot, before full payment thereof, shall be transferred, encumbered, or otherwise disposed of by the purchaser thereof."

SEC. 4. This Act shall take effect upon its approval.

Approved, June 12, 1950.

H. No. 625

[REPUBLIC ACT NO. 499]

AN ACT GRANTING P. FAGUTAO A FRANCHISE FOR AN ELECTRIC LIGHT, HEAT AND POWER SYSTEM IN THE MUNICIPALITIES OF JIMENEZ AND SINACABAN, PROVINCE OF MISAMIS OCCIDENTAL.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Subject to the terms and conditions established in Act Numbered Thirty-six hundred and thirty-six, as amended by Commonwealth Act Numbered One hundred and thirty-two, and to the provisions of the Constitution, there is granted to P. Fagutao for a period of twenty-five years from the approval of this Act, the right, privilege, and authority to construct, maintain, and operate an electric light, heat and power plant for the purpose of generating and distributing electric light, heat and/or power for sale within the municipalities of Jimenez and Sinacaban, Province of Misamis Occidental: *Provided*, That the holder of the franchise herein granted shall start operation thereof within one and one-half years from the approval of said franchise if he is not an actual operator; and

within six months if he is already a holder of a municipal franchise. Failure to comply with this requirement shall *ipso facto* cancel and void the franchise.

SEC. 2. It is expressly provided that in the event the Government should desire to maintain and operate for itself the plant and enterprise herein authorized, the grantee shall surrender the franchise and will turn over to the Government all serviceable equipment therein, at cost.

SEC. 3. This Act shall take effect upon its approval.

Approved, June 12, 1950.

H. No. 808

[REPUBLIC ACT NO. 500]

AN ACT TO TRANSFER CERTAIN BARRIOS FROM THE TERRITORIAL JURISDICTION OF THE MUNICIPAL DISTRICT OF BONTOC TO THAT OF THE MUNICIPAL DISTRICT OF SADANGA, SUB-PROVINCE OF BONTOC, MOUNTAIN PROVINCE.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The barrios of Betwagan and Anabel, in the municipal district of Bontoc, are transferred from the said municipal district to that of the municipal district of Sadanga, Sub-province of Bontoc, Mountain Province.

SEC. 2. This Act shall take effect upon its approval.

Approved, June 12, 1950.

H. No. 897

[REPUBLIC ACT NO. 501]

AN ACT GRANTING TO PLACIDO AUSEJO A FRANCHISE TO INSTALL, OPERATE, AND MAINTAIN A TELEPHONE SYSTEM IN THE CITY OF DUMAGUETE.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Subject to the conditions established in this Act and the provisions of Commonwealth Act Numbered One hundred and forty-six, as amended, and of the Constitution, applicable thereto, there is hereby granted to Placido Ausejo, hereinafter called the grantee, his successors or assigns, for a period of fifty years from the approval of this Act, the right and privilege to construct, maintain and operate in the City of Dumaguete a telephone system to carry on the business of the electrical transmission of conversations and signals in said city. For this purpose, the grantee is hereby authorized to use all streets and public thoroughfares of the city for the construction, maintenance, and operation of all apparatus, conductors, and appliances necessary for the electrical transmission of conversations and signals, to erect poles, string wires, build conduits, lay cables, and to construct, maintain, and use such other approved and generally accepted means of electrical con-

duction in, on, over, or under the public roads, highways, lands, bridges, streets, lanes, and sidewalks of said city, and overhead or underground lines or on the surface of the ground as may be necessary and best adapted to said transmission.

SEC. 2. All poles erected and all conduits constructed or used by the grantee shall be located in places designated by the city authorities: *Provided,* That all poles erected and used by the grantee or his successors shall be of such appearance as not to disfigure the streets, and the wires and cables carried by said poles and the underground cables shall be strung and laid in accordance with professional standards approved by the Public Service Commission; and said poles shall be of such a height as to maintain the wires and cables stretched on the same at a height of at least fifteen feet above the level of the ground, and said wires and cables shall be so placed as not to imperil the public safety, in accordance with a plan approved by the Public Service Commission: *Provided, further,* That whenever twenty-five or more pairs of wires or other conductors are carried on one line of poles in any place of the *población* of said city, said wires or conductors shall be placed in one cable, and that whenever more than eight hundred pairs of wires or other conductors are carried on one line of poles said wires or conductors, shall be placed underground by the grantee, his successors or assigns, whenever ordered so to do by the Public Service Commission.

SEC. 3. For the purpose of erecting and placing the poles or other supports of such wires or other conductors or of laying and maintaining underground said wires, cables or other conductors, it shall be lawful for the grantee, his successors or assigns to make excavations or lay conduits in any of the public places, highways, streets, alleys, lanes, avenues, sidewalks or bridges in the City of Dumaguete: *Provided, however,* That any public place, highway, street, alley, lane, avenue, sidewalk or bridge disturbed, altered or changed by reason of the erection of poles or other supports, or the laying underground of wires or other conductors, or of conduits, shall be repaired and restored to the satisfaction of the city engineer of the city, and removing from the same all rubbish, dirt, refuse, or other material which may have been placed there or taken up in the erection of said poles or the laying of said underground conduits, leaving them in as good condition as they were before the work was done.

SEC. 4. Whenever any person has obtained permission to use any of the streets of said city for the purpose of removing any building or in the prosecution of any city work or for any other cause whatsoever, making it necessary to raise or remove any of said wires or conduits which may obstruct or hinder the prosecution of said work, the said grantee, upon notice by the municipal board of the city, served upon said grantee, at least forty-eight hours in advance, shall raise or remove any of said wires or conduits which may hinder the prosecution of such work or obstruct the removal of said building, so as to allow the free and unobstructed passage of said building and the free and unobstructed prosecution of said work, and the person or entity at whose request the wires or poles

or other structures have been removed, shall pay one-half of the actual cost of replacing the poles or raising the wires and other conductors or structures. The notice shall be in the form of a resolution duly adopted by the municipal board and served upon the grantee or his duly authorized representative or agent by a person competent to testify as witness in a civil action, and in case of refusal or failure of the grantee to comply with such notice, the mayor of the city, with the proper approval of the municipal board first had, shall order such wires or conduits to be raised or removed at the expense of the grantee, for the purposes aforesaid.

SEC. 5. All apparatus and appurtenances used by the grantee, his successors or assigns shall be modern and first class in every respect, and all telephone lines or installations used, maintained and operated in connection with this franchise by the grantee, his successors or assigns shall be kept and maintained at all times in a satisfactory manner, so as to render an efficient and adequate telephone service, and it shall be the further duty of said grantee, his successors or assigns, whenever required to do so by the Public Service Commission to modify, improve, and change such telephone system for the electrical transmission of conversations and signals by means of electricity in such manner and to such extent as the progress of science and improvements in the method of electrical transmission of conversations and signals by means of electricity may make reasonable and proper.

SEC. 6. The grantee, his successors or assigns, shall keep a separate account of the gross receipts of their telephone business, and shall furnish to the Auditor General and the Treasurer of the Philippines a copy of such account not later than the thirty-first day of July of each year for the twelve months preceding the first day of July.

SEC. 7. The grantee, his successors or assigns, shall be liable to pay the same taxes on their real estate, buildings, and personal property, exclusive of this franchise, as other persons or corporations are now or hereafter may be required by law to pay. In addition, the grantee, his successors or assigns, shall pay to the Treasurer of the Philippines each year, within ten days after the audit and approval of the accounts as prescribed in section six of this Act, one *per centum* of all gross receipts if the telephone business transacted under this franchise by the grantee, his successors or assigns, and the said percentage shall be in lieu of all taxes on this franchise or its earnings.

SEC. 8. Within sixty days from the approval of this Act, the grantee shall file with the Public Service Commission his application for a certificate of public necessity and convenience. In case of failure to make said application within the period established, this franchise shall become null and void.

SEC. 9. The grantee shall not commence any construction whatever pursuant to this franchise without first obtaining a certificate of public necessity and convenience from the Public Service Commission of the form and character provided for in Commonwealth Act Numbered One hundred and forty-six, as amended, specifically authorizing such construction. The grantee shall not exercise any right or privilege under this franchise without first having

obtained such certificate of public necessity and convenience from the Public Service Commission. The Public Service Commission shall have the power to issue such certificate of public necessity and convenience whenever it shall, after due hearing, determine that such construction or such exercise of the rights and privileges under this franchise is necessary and proper for the public convenience, and the Commission shall have the power in so approving to impose such conditions as to construction, equipment, maintenance, service or operation as the public convenience and interests may reasonably require, and such certificate shall state the date on which the grantee shall commence construction and the period within which the work shall be completed. In order to avail himself of the rights granted by such certificate of public necessity and convenience, the grantee shall file with the Public Service Commission, within such period as said Commission shall fix, his written acceptance of the terms and conditions of this franchise and of the certificate, together with the document evidencing the fact that the deposit required in section ten has been made. In the event that the grantee shall not commence the telephone service referred to in the certificate obtained and filed as herein provided within such period as the Public Service Commission shall have fixed, said Commission may declare said certificate null and void and the deposit made pursuant to section ten of this Act forfeited to the National Government unless the grantee shall have been prevented from doing so by fortuitous cause or *force majeure*, usurped or military power, martial law, riot, uprising, or other inevitable cause: *Provided, however*, That if the grantee shall have been prevented by one or more of all such causes for commencing the telephone service within the period specified, the time during which he shall have been so prevented shall be added to said period: *Provided, further*, That failure on the part of the grantee to accept the conditions of this franchise and those imposed in the certificate of public necessity and convenience shall automatically avoid this franchise.

SEC. 10. Upon the written acceptance of the terms and conditions of this franchise, the grantee shall deposit in the National Treasury one thousand pesos, or negotiable bonds of the Government of the Philippines or other securities approved by the Secretary of Public Works and Communications, of the face value of one thousand pesos, as an earnest of good faith in accepting this franchise and a guaranty that, within six months from the date of the granting by the Public Service Commission of a certificate of public necessity and convenience authorizing the construction and operation by the grantee of a telephone service in the City of Dumaguete the grantee, his successors or assigns will be completely provided with the necessary equipment and ready to begin operation in accordance with the terms of this franchise: *Provided*, That if the deposit is made in money the same shall be deposited at interest in some interest-paying bank approved by the Secretary of Public Works and Communications, and all interest accruing and due on such deposit shall be collected by the Treasurer of the Philippines and paid to the grantee, his successors or assigns, on demand: *And provided, further*, That if the deposit made with the Treasurer of the Philippines be in negotiable bonds of the Government of

the Philippines or other interest-bearing securities approved by the Secretary of Public Works and Communications, the interest on such bonds or securities shall be collected by the Treasurer of the Philippines and paid over to the grantee, his successors or assigns, on demand.

Should the said grantee, his successors or assigns, for any other cause than the act of God, the public enemy, usurped or military power, martial law, riot, civil commotion, or inevitable cause, fail, refuse, or neglect to begin within twelve months from the date of the granting of said certificate of public necessity and convenience, the business of transmitting messages by telephone, or fail, refuse, or neglect to be fully equipped and ready to operate, within twelve months from the date of the granting of said certificate of public necessity and convenience, the telephone service in the City of Dumaguete applied for by the grantee according to the terms of this franchise, then the deposit prescribed by this section to be made with the Treasurer of the Philippines, whether in money, bonds, or other securities, shall become the property of the National Government as liquidated damages caused to such Government by such failure, refusal, or neglect, and thereafter no interest on said bonds or other securities deposited shall be paid to the grantee, his successors or assigns. Should the said grantee, his successors or assigns, begin the business of transmitting messages by telephone and be ready to operate according to the terms of this franchise, the telephone service in the City of Dumaguete within twelve months from the date of the granting of said certificate of public necessity and convenience, then and in that event the deposit prescribed by this section shall be returned by the National Government to the grantee, his successors or assigns, upon recommendation of the Public Service Commission, as soon as the telephone service in said city applied for by the grantee has been installed in accordance with the terms of this franchise: *Provided, further,* That all the time during which the grantee, his successors or assigns, may be prevented from carrying out the terms and conditions of this franchise by any of said causes shall be added to the time allowed by this franchise for compliance with its provisions.

SEC. 11. The books and accounts of the grantee, his successors or assigns, shall always be open to the inspection of the provincial auditors or their authorized representatives, and it shall be the duty of the grantee to submit to the Auditor General quarterly reports in duplicate showing the gross receipts and the net receipts for the quarter past and the general condition of the business.

SEC. 12. The rights herein granted shall not be exclusive, and the rights and power to grant any corporation, association, or person other than the grantee, franchise for the telephone or electrical transmission of messages or signals shall not be impaired or affected by the granting of this franchise: *Provided,* That the poles erected, wires strung or cables or conduits laid by virtue of any franchise for telephone, or other electrical transmission of messages and signals granted subsequent to this franchise shall be so placed as not to impair the efficient and effective transmission of conversations or signals under this franchise by means of poles erected, wires strung, or cables or conduits

actually laid and in existence at the time of the granting of said subsequent franchise: *And provided, further*, That the Public Service Commission, after hearing both parties interested, may compel the grantee of this franchise or his successors or assigns, to remove, relocate, or replace his poles, wires or conduits; but in such case the reasonable cost of the removal, relocation, or replacement shall be paid by the grantee of the subsequent franchise or his successors or assigns to the grantee of this franchise or his successors or assigns.

SEC. 13. The grantee, his successors or assigns, shall hold the National, provincial, city and municipal governments harmless from all claims, accounts, demands, or actions arising out of accidents or injuries, whether to property or to persons, caused by the construction or operation of the telephone or other electrical transmission system of the said grantee, his successors or assigns.

SEC. 14. The rates for the telephone service, flat rates as well as measured rates, shall be subject to the approval of the Public Service Commission.

The monthly rates for telephone having a metallic circuit within the limits of the *población* of the city shall also be approved by the Public Service Commission.

SEC. 15. The grantee shall not, without the previous and explicit approval of the Congress of the Philippines, directly or indirectly, transfer, sell, or assign this franchise to any person, association, company, or corporation or other mercantile or legal entity.

SEC. 16. The grantee may install, maintain, operate, purchase or lease such telephone stations, lines, cables or system, as is, or are, convenient or essential to efficiently carry out the purpose of this franchise: *Provided, however*, That the grantee, his successors or assigns shall not, without the permission of the Public Service Commission first had, install, maintain, operate, purchase or lease such stations, lines, cables or systems.

SEC. 17. The Philippine Government shall have the privilege, without compensation, of using the poles of the grantee to attach one ten-pin crossarm, and to install, maintain and operate wires of its telegraph system thereon: *Provided, however*, That the Bureau of Telecommunications shall have the right to place additional crossarms and wires on the poles of the grantee by paying a compensation, the rate of which is to be agreed upon by the Director of Telecommunications and the grantee: *Provided, further*, That in case of disagreement as to the rate of contract rental, same shall be fixed by the Public Service Commission. The City of Dumaguete shall also have the privilege, without compensation, of using the poles of the grantee, to attach one standard crossarm, and to install, maintain and operate wires of a local police and fire alarm system; but the wires of such telegraph lines, police or fire alarm system, shall be placed and strung in such manner as to cause no interference with or damage to the wires of the telephone service of the grantee.

SEC. 18. The grantee shall purchase the property used by the provincial government for the operation of a similar service in the Province of Oriental Negros and the provincial government shall sell said property together with all rights and privileges now enjoyed by said provincial gov-

ernment, at the price agreed upon by the grantee and the provincial board. In case of disagreement as to the purchase price, the Public Service Commission shall be authorized to act as referee and to determine the reasonable price at which said property shall be conveyed, after hearing both parties, and its decision shall be final.

SEC. 19. It is expressly provided that in the event the Government should desire to maintain and operate for itself the system and enterprise herein authorized, the grantee shall surrender his franchise and will turn over to the Government said system and all serviceable equipment therein, at cost, less reasonable depreciation.

SEC. 20. This Act shall take effect upon its approval.

Approved, June 12, 1950.

H. No. 1037

[REPUBLIC ACT NO. 502]

AN ACT GRANTING THE VISAYAN ELECTRIC COMPANY, S. A. A FRANCHISE FOR AN ELECTRIC LIGHT, HEAT AND POWER SYSTEM IN THE MUNICIPALITY OF SIBULAN, PROVINCE OF ORIENTAL NEGROS.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Subject to the terms and conditions established in Act Numbered Thirty-six hundred and thirty-six, as amended by Commonwealth Act Numbered One hundred and thirty-two, and to the provisions of the Constitution, there is granted to the Visayan Electric Company, S. A., for a period of twenty-five years from the approval of this Act, the right, privilege, and authority to construct, maintain, and operate an electric light, heat and power plant for the purpose of generating and distributing electric light, heat, and/or power for sale within the municipality of Sibulan, Province of Oriental Negros: *Provided,* That the holder of the franchise herein granted shall start the operation thereof within one and a half years from the approval of said franchise.

SEC. 2. It is expressly provided that in the event the government should desire to maintain and operate for itself the plant and enterprise herein authorized, the grantee shall surrender its franchise and will turn over to the government all serviceable equipment therein, at cost, less reasonable depreciation.

SEC. 3. This Act shall take effect upon its approval.

Approved, June 12, 1950.

H. No. 1044

[REPUBLIC ACT NO. 503]

AN ACT TO AMEND CERTAIN SECTIONS OF COMMONWEALTH ACT NUMBERED SIX HUNDRED AND THIRTEEN, OTHERWISE KNOWN AS THE PHILIPPINE IMMIGRATION ACT OF 1940.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Paragraph (*a*) of section five of Commonwealth Act Numbered Six hundred and thirteen is hereby amended to read as follows:

"(*a*) The position of Immigrant Inspector is created, appointments to which shall be made upon the recommendation of the Commissioner of Immigration in accordance with the Civil Service Laws."

SEC. 2. The same Act is amended by inserting between sections seven and eight thereof a new section with the title "Assignment of Immigration Employees to Overtime Work," to be known as section seven–A, which shall read as follows:

"ASSIGNMENT OF IMMIGRATION EMPLOYEES TO OVERTIME WORK"

"SEC. 7–A. Immigration employees may be assigned by the Commissioner of Immigration to do overtime work at rates fixed by him when the service rendered is to be paid for by shipping companies and airlines or other persons served."

SEC. 3. Section nine of Commonwealth Act Numbered Six hundred and thirteen is hereby amended to read as follows:

"SEC. 9. Aliens departing from any place outside the Philippines, who are otherwise admissible and who qualify within one of the following categories, may be admitted as nonimmigrants:

"(*a*) A temporary visitor coming for business or for pleasure or for reasons of health;

"(*b*) A person in transit to a destination outside the Philippines;

"(*c*) A seaman serving as such on a vessel arriving at a port of the Philippines and seeking to enter temporarily and solely in the pursuit of his calling as a seaman;

"(*d*) An alien entitled to enter the Philippines solely to carry on trade between the Philippines and the foreign state of which he is a national under and in pursuance of the provisions of a treaty of commerce and navigation, and his wife, and his unmarried children under twenty-one years of age, if accompanying or following to join him;

"(*e*) An accredited official of a foreign government recognized by the Government of the Philippines, his family, attendants, servants, and employees;

"(*f*) A student, having means sufficient for his education and support in the Philippines, who is at least eighteen years of age and who seeks to enter the Philippines temporarily and solely for the purpose of taking up a course of study higher than high school at a university, seminary, academy, college or school approved for such alien students by the Commissioner of Immigration;(5)

"(*g*) An alien coming to prearranged employment, for whom the issuance of a visa has been authorized in accordance with section twenty of this Act, and his wife, and his unmarried children under twenty-one years of age, if accompanying him or if following to join him within a period of six months from the date of his admission into the Philippines as a nonimmigrant under this paragraph.(6)

"An alien who is admitted as a nonimmigrant cannot remain in the Philippines permanently. To obtain permanent admission, a nonimmigrant alien must depart vol-

untarily to some foreign country and procure from the appropriate Philippine consul the proper visa and thereafter undergo examination by the officers of the Bureau of Immigration at a Philippine port of entry for determination of his admissibility in accordance with the requirements of this Act."(7)

SEC. 4. Section ten of the same Act is hereby amended to read as follows:

"SEC. 10. Nonimmigrants must present for admission into the Philippines unexpired passports or official documents in the nature of passports issued by the governments of the countries to which they owe allegiance or other travel documents showing their origin and identity as prescribed by regulations, and valid passport visas granted by diplomatic or consular officers, except that such documents shall not be required of the following aliens: (*a*) A child qualifying as a nonimmigrant, born subsequent to the issuance of the passport visa of an accompanying parent, the visa not having expired; and (*b*) A seaman qualifying as such under section 9 (*c*) of this Act."(8)

SEC. 5. Section thirteen of the same Act is hereby amended to read as follows:

"SEC. 13. Under the conditions set forth in this Act, there may be admitted into the Philippines immigrants, termed 'quota immigrants' not in excess of fifty (50) of any one nationality or without nationality for any one calendar year, except that the following immigrants, termed 'nonquota immigrants,' may be admitted without regard to such numerical limitations.

"The corresponding Philippine Consular representative abroad shall investigate and certify the eligibility of a quota immigrant previous to his admission into the Philippines. Qualified and desirable aliens who are in the Philippines under temporary stay may be admitted within the quota, subject to the provisions of the last paragraph of section 9 of this Act.

"(*a*) The wife or the husband or the unmarried child under twenty-one years of age of a Philippine citizen, if accompanying or following to join such citizen;

"(*b*) A child of alien parents born during the temporary visit abroad of the mother, the mother having been previously lawfully admitted into the Philippines for permanent residence, if the child is accompanying or coming to join a parent and applies for admission within five years from the date of its birth;

"(*c*) A child born subsequent to the issuance of the immigration visa of the accompanying parent, the visa not having expired;

"(*d*) A woman who was a citizen of the Philippines and who lost her citizenship because of her marriage to an alien or by reason of the loss of Philippine citizenship by her husband, and her unmarried child under twenty-one years of age, if accompanying or following to join her;

"(*e*) A person previously lawfully admitted into the Philippines for permanent residence, who is returning from a temporary visit abroad to an unrelinquished residence in the Philippines."(9)

SEC. 6. Section 15 of the same Act is hereby amended to read as follows:

"SEC. 15. Immigrants must present for admission into the Philippines unexpired passports or official documents in the nature of passports issued by the governments of the countries to which they owe allegiance or other travel documents showing their origin and identity as prescribed by regulations, and valid immigration visas issued by consular officers, except that children born subsequent to the issuance of the immigration visa or a reentry permit in case of children born abroad during the temporary visit abroad of their mothers as provided for in paragraph (*c*) of section thirteen of this Act the immigration visa or reentry permit not having expired, and returning residents, as referred to in section thirteen (*f*) hereof, presenting unexpired reentry permits as provided for in section twenty-two of this Act, shall not be subject to these documentary requirements. No child shall however be exempt from these documentary requirements unless the alleged mother shall have proved her state of pregnancy before the consular officers in the case of children born subsequent to the issuance of a valid immigration visa, or before the immigration authorities prior to her departure from the Philippines in the case of children born abroad of mothers with valid reentry permits: *Provided, however,* That in the latter case should the mother become pregnant after her departure from the Philippines the fact of her pregnancy shall be proved before the consular officers who shall issue the appropriate certification for presentation to the immigration authorities upon her return to the Philippines."

SEC. 7. Paragraph (*a*) of section twenty of the same Act is hereby amended to read as follows:

"SEC. 20. (*a*) A passport visa for a nonimmigrant referred to in section nine (*g*) of this Act who is coming to prearranged employment shall not be issued by a consular officer until the consular officer shall have received authorization for the issuance of the visa. Such authorization shall be given only on petition filed with the Commissioner of Immigration establishing that no person can be found in the Philippines willing and competent to perform the labor or service for which the nonimmigrant is desired and that the nonimmigrant's admission would be beneficial to the public interest. The petition shall be made under oath, in the form and manner prescribed by regulations, by the prospective employer or his representative. The petition shall state fully the nature of the labor or service for which the nonimmigrant is desired, the probable length of time for which he is to be engaged, the wages and other compensation which he is to receive, the reasons why a person in the Philippines cannot be engaged to perform the labor or service for which the nonimmigrant is desired and why the nonimmigrant's admission would be beneficial to the public interest. The petition shall be accompanied by a certified copy of any written contract or agreement entered into for the immigrant's service and shall contain such additional information as may be deemed material. Substantiation of all the allegations made in the petition shall be required and the allegations that no person can be found in the Philippines willing and com-

petent to perform the labor or service for which the nonimmigrant is desired and that the nonimmigrant's admission would be beneficial to the public interest shall be established beyond doubt by convincing and satisfactory evidence. (11)

"The title 'Immigration Visas for Nonquota Immigrant' shall be understood to refer only to section twenty-one of the same Act."

SEC. 8. Section twenty-two of the same Act is hereby amended by adding a second paragraph to read as follows:

"The permit, upon approval of the Commissioner of Immigration, may be made good for several trips within the period of one year: *Provided, however,* That the holder thereof shall be required to pay the fee required under section forty-two (*a*) (*3*) of this Act for every trip he makes." (12)

SEC. 9. Paragraphs (*b*) and (*c*) of section twenty-seven of the same Act are hereby amended to read as follows:

"(*b*) A board of special inquiry shall have authority (1) to determine whether an alien seeking to enter or land in the Philippines shall be allowed to enter or land or shall be excluded, and (2) to make its findings and recommendations in all the cases provided for in section twenty-nine of this Act wherein the Commissioner of Immigration may admit an alien who is otherwise inadmissible. For this purpose, the board or any member thereof, may administer oaths and take evidence and in case of necessity may issue *subpœna* and/or *subpœna duces tecum.* The hearing of all cases brought before a board of special inquiry shall be conducted under rules of procedure to be prescribed by the Commissioner of Immigration. The decision of any two members of the board shall prevail and shall be final unless reversed on appeal by the Board of Commissioners as hereafter stated, or, in the absence of an appeal, unless reversed by the Board of Commissioners after a review by it, *motu proprio* of the entire proceedings within one year from the promulgation of said decision. At the conclusion of the hearing of any case, the board of special inquiry shall at once proceed to deliberate and decide on the merits thereof. The decision shall be promulgated and the findings and recommendation, in proper cases, submitted not later than two days from the date of the deliberation. Should the board of special inquiry need more time to make a written decision of findings and recommendation in view of the nature of the case, the chairman thereof shall report the case to the Commissioner of Immigration who may grant an extension of time if he considers it necessary.

"(*c*) An alien excluded by a board of special inquiry or a dissenting member thereof may appeal to the Board of Commissioners, whose decision in the case shall be final. The decision on appeal shall be put in writing and promulgated not less than seven days from the time the case is submitted for decision. In appeal cases, the alien shall have the right to be represented by an attorney or

counsel who shall have access to the record of the board of special inquiry in the particular case on appeal."(13)

SEC. 10. Paragraphs (14) and (15) of section twenty-nine (*a*) of the same Act are hereby amended to read as follows:

"(14) Persons coming to perform unskilled manual labor in pursuance of a promise or offer of employment, express or implied, but this provision shall not apply to persons bearing passport visas authorized by section twenty of this Act;

"(15) Persons who have been excluded or deported from the Philippines, but this provision may be waived in the discretion of the Commissioner of Immigration: *Provided, however,* That the Commissioner of Immigration shall not exercise his discretion in favor of aliens excluded or deported on the ground of conviction for any crime involving moral turpitude or for any crime penalized under sections forty-five and forty-six of this Act or on the ground of having engaged in hoarding, blackmarketing or profiteering unless such aliens have previously resided in the Philippines immediately before his exclusion or deportation for a period of ten years or more or are married to native Filipino women."(14)

SEC. 11. Section 32 of the same Act is hereby amended by adding a second paragraph which shall read as follows:

"The crew lists of incoming vessels shall be duly visaed by Philippine consular officials abroad."(15)

SEC. 12. Sections thirty-five and thirty-six of the same Act are amended to read as follows:

"SEC. 35. The cost of maintenance while on land, medical treatment in hospital or elsewhere, burial in event of death, and transfer to the vessel in the event of return, of any alien brought to the Philippines and temporarily removed from the vessel for examination by order of the immigration officers, shall be borne by the owner or owners of the vessel on which the alien came.

"SEC. 36. An alien brought to the Philippines who is excluded shall be immediately sent back, in accommodations of the same class in which he arrived, to the country whence he came, on the same vessel bringing him, unless in the opinion of the Commissioner of Immigration, immediate return is not practicable or proper. The expense of the return of such an alien shall be borne by the owner or owners of such vessel. If the Commissioner of Immigration finds that immediate return is not practicable or proper, or if the vessel by which the excluded alien came has left the Philippines and it is impracticable for any reason to return the alien within a reasonable time by another vessel owned by the same interests, the cost of return may be paid by the Government and recovered from the owner, agent, or consignee of the vessel. Where return to the country whence the excluded alien came cannot for any reason be effected, the Commissioner of Immigration may direct the alien's removal to the country of his nativity or of which he is a national, and the cost of such removal, if removal by vessel on which he came or by another vessel owned by the same interests cannot be accomplished within a reasonable time, shall likewise be at the expense of the owners of such vessel."(16)

SEC. 13. Subparagraphs (1) and (4) of paragraph (*a*) of section thirty-seven of the same Act are hereby amended to read as follows:

"(1) Any alien who enters the Philippines after the effective date of this Act by means of false and misleading statements or without inspection and admission by the immigration authorities at a designated port of entry or at any place other than at a designated port of entry; (17)

"(4) Any alien who is convicted and sentenced for a violation of the law governing prohibited drugs;"(18)

The following grounds for deportation are added to the grounds for deportation provided in the same section to read as follows:

"(10) Any alien who, at any time within five years after entry, shall have been convicted of violating the provisions of the Philippine Commonwealth Act Numbered Six hundred and fifty-three, otherwise known as the Philippine Alien Registration Act of 1941, or who, at any time after entry, shall have been convicted more than once of violating the provisions of the same Act.(19)

"(11) Any alien who engages in profiteering, hoarding, or blackmarketing, independent of any criminal action which may be brought against him. (20)

"(12) Any alien who is convicted of any offense penalized under Commonwealth Act Numbered Four hundred and seventy-three, otherwise known as the Revised Naturalization Laws of the Philippines, or any law relating to acquisition of Philippine citizenship. (21)

"(13) Any alien who defrauds his creditor by absconding or alienating properties to prevent them from, being attached or executed."

Paragraph (*b*) of the same section is hereby amended to read as follows:

"(*b*) Deportation may be effected under clauses 2, 7, 8, 11 and 12 of paragraph (*a*) of this section at any time after entry, but shall not be effected under any other clause unless the arrest in the deportation proceedings is made within five years after the cause for deportation arises. Deportation under clauses 3 and 4 shall not be effected if the court, or judge thereof, when sentencing the alien, shall recommend to the Commissioner of Immigration that the alien be not deported."(22)

SEC. 14. Paragraph (*e*) of section forty-one of the same Act is hereby amended to read as follows:

"SEC. 41. (*a*) Any alien in the Philippines at the time of the passage of this Act concerning whom no record of admission for permanent residence exists or can be located may apply to the Commissioner of Immigration for legalization of his residence in the Philippines. The application shall be made in the form and manner prescribed by regulations issued by the Commissioner. Any alien in the Philippines, whose record of admission for permanent residence does not exist or cannot be located and who shall fail to legalize his residence in the Philippines as provided in this section, shall be presumed to be unlawfully within the Philippines."(23)

SEC. 15. The special provisos of items (3) and (12) of paragraph (*a*) of section forty-two of the same Act are hereby repealed.

Another item is hereby added to the same paragraph of the same section to read as follows:

"(13) Visa of alien crew list ..... ₱20.00"(24)

SEC. 16. Subparagraph (1) of paragraph (*a*) of section forty-four of the same Act is hereby amended to read as follows:

"(1) Fails to submit to the immigration officials at the port of arrival the crew lists, duly visaed, and passenger manifests and other information required by regulations issued under section thirty-two of this Act;"(25)

Paragraph (*d*) of section forty-four of the same Act is hereby made into a separate section to be designated as section 46–A to read as follows:

"SEC. 46–A. The pilot, master, agent, owner, consignee, or any person in charge of a vessel or aircraft which carries passenger into the Philippines from abroad, is prohibited from allowing the passengers to disembark therefrom, unless all the passengers thereof have been checked up by the Commissioner of Immigration or his authorized representatives. A violation of the provisions hereof shall, upon conviction, be punishable by a fine of not more than one thousand pesos and by an imprisonment of not more than six months. If the offender is the owner of the vessel or aircraft the fine imposed herein shall be five thousand pesos." (26)

The designation of paragraphs (*e*) and (*f*) of the same section is hereby changed to (*d*) and (*e*) respectively. (27)

SEC. 17. The same Act is amended by inserting between section 45 and section 46 thereof a new section, to be known as section forty-five–A which shall read as follows:

"SEC. 45–A. Persons duly served with *subpoena* or *subpoena duces tecum* and who fail to comply with the requirements thereof shall, after conviction, be imprisoned for not more than fifteen days or fined for not more than one hundred pesos, or both."

SEC. 18. Section forty-eight of the same Act is hereby amended to read as follows:

"SEC. 48. Nothing in this Act shall be construed to apply to an official of a recognized foreign government who is coming on the business of his government, nor to his family, attendants, servants, and employees, except that they shall be in possession of passports or other credentials showing their official status, duly visaed by Philippine diplomatic officials abroad, unless the President orders otherwise, and that their names shall appear on the passenger lists of transporting vessels required by section 32 of this Act, and further, that any alien admitted in the status of attendant, servant, or employee of a foreign government official who fails to maintain such status, shall be deported under the procedure prescribed by section 37 of this Act."(29)

SEC. 19. Section 54 of the same Act is hereby repealed.(30)

SEC. 20. This Act shall take effect upon its approval.

Approved, June 12, 1950.

H. No. 1220

[REPUBLIC ACT NO. 504]

AN ACT APPROPRIATING THE SUM OF TWO HUNDRED THOUSAND PESOS, OR SO MUCH THEREOF AS MAY BE NECESSARY, TO DEFRAY THE EXPENSES IN CONNECTION WITH THE CONFERENCE IN THE PHILIPPINES OF SOUTHEAST ASIAN AND SOUTHWEST PACIFIC COUNTRIES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The sum of two hundred thousand pesos, or so much thereof as may be necessary, is hereby appropriated out of any funds in the National Treasury not otherwise appropriated to defray the expenses in connection with the conference of Southeast Asian and Southwest Pacific countries to be held in the Philippines in the year nineteen hundred and fifty: *Provided,* That no portion of this appropriation shall be used for the purchase of automobiles, jitneys, jeeps, station wagons, motorcycles and other motor vehicles, nor for transportation of foreign delegates incurred outside the Philippines.

SEC. 2. This Act shall take effect upon its approval.

Approved, June 12, 1950.

H. No. 640

[REPUBLIC ACT NO. 505]

AN ACT TO CREATE THE PROVINCES OF ORIENTAL MINDORO AND OCCIDENTAL MINDORO

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The Province of Mindoro is hereby divided into two provinces, to be known as Oriental Mindoro and Occidental Mindoro, in the following manner:

The Province of Oriental Mindoro shall consist of that portion of the present Province of Mindoro which comprises the municipalities of Baco, Bongabon, Bulalacao, Calapan, Mansalay, Naujan, Pinamalayan, Pola, Puerto Galera, Roxas, and San Teodoro.

The Province of Occidental Mindoro shall consist of the other portion of the present Province of Mindoro, comprising the municipalities of Abra de Ilog, Looc, Lubang, Mamburao, Paluan, Sablayan, San Jose, and Sta. Cruz.

SEC. 2. The capital of Oriental Mindoro shall be Calapan and that of Occidental Mindoro shall be the municipality designated by at least five municipal councils of the municipalities of Occidental Mindoro, the designation to be made not later than fifteen days after the constitution of said province. In the event of a failure to make the designation as herein required, the President of the Philippines shall designate the capital of the said province.

SEC. 3. Except as hereinafter provided, all provisions of law now or hereafter applicable to the regular provinces shall be applicable to the Provinces of Oriental Mindoro and Occidental Mindoro.

SEC. 4. The elective provincial officers of the former Province of Mindoro elected at the last general election shall continue to govern the Province of Oriental Mindoro until their successors shall have been elected and shall have qualified. The provincial governor, the provincial treasurer, and the provincial fiscal of Oriental Mindoro shall continue to receive the salaries they are receiving at the time of the approval of this Act, until the new readjustment of salaries in accordance with existing law.

SEC. 5. As soon as this Act shall be carried into execution, the elective provincial officers of the Province of Occidental Mindoro shall be appointed by the President of the Philippines, with the advice and consent of the Commission on Appointments, and shall hold office until their successors shall have been duly elected at the next general election and shall have qualified.

SEC. 6. The Provinces of Oriental Mindoro and Occidental Mindoro shall each have one Representative: *Provided,* That the present Representative for the Province of Mindoro shall, during his term of office as such, be the Representative for the Province of Oriental Mindoro: *Provided, further,* That he shall likewise be the Representative for the Province of Occidental Mindoro until a Representative for the latter province shall have been elected in the next general election for national officials or in a special election called for the purpose.

SEC. 7. The funds and obligations and the property of all kinds to be assigned to the Provinces of Oriental Mindoro and Occidental Mindoro upon the execution of the provisions of this Act shall be distributed equitably between the two provinces, in such manner as the Auditor General may recommend and the President of the Philippines approve.

SEC. 8. This Act shall take effect on such date as may, by proclamation, be set by the President of the Philippines.

Approved, June 13, 1950.

H. No. 564

[REPUBLIC ACT NO. 506]

AN ACT TO ESTABLISH A NATIONAL AGRICULTURAL SCHOOL IN THE PROVINCE OF MINDORO

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. There shall be established under the direct supervision of the Director of Public Schools, a national agricultural school in the Province of Mindoro, at a suitable site to be selected by said Director, to be known as the Mindoro Agricultural School. Said school shall be of the Central Luzon Agricultural School type.

SEC. 2. Upon the recommendation of the Director of Public Schools, the President of the Philippines shall set aside and reserve such portion of the public lands located within the Province of Mindoro as may be necessary and convenient for the establishment of the school and farm sites.

SEC. 3. The sum of one hundred and fifty thousand pesos is authorized to be appropriated, out of any funds in the National Treasury not otherwise appropriated, for the establishment, operation and maintenance of the said school for the fiscal year ending June thirty, nineteen hundred and fifty-one. Thereafter, the necessary sum for said purpose shall be included in the annual General Appropriation Acts.

SEC. 4. This Act shall take effect upon its approval.

Approved, June 13, 1950.

H. No. 150

[REPUBLIC ACT NO. 507]

AN ACT TO CREATE THE MUNICIPALITY OF LASAM IN THE PROVINCE OF CAGAYAN

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The barrios of the municipality of Gattaran, Province of Cagayan, west of the Cagayan River are separated from the said municipality and constituted into a new and regular municipality to be known as the municipality of Lasam, with the present site of the barrio of Macatabang as the seat of the government. The new municipality of Lasam shall form part of the Second Representative District of the Province of Cagayan.

SEC. 2. The elective officials of the new municipality shall be appointed by the President of the Philippines and shall hold office until their successors shall have been elected and shall have duly qualified.

SEC. 3. This Act shall take effect upon its approval.

Approved, June 13, 1950.

H. No. 61

[REPUBLIC ACT NO. 508]

AN ACT GRANTING CONSUELO C. NAPANA A FRANCHISE FOR AN ELECTRIC LIGHT, HEAT AND POWER SYSTEM IN THE MUNICIPALITY OF BUENAVISTA, PROVINCE OF AGUSAN.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Subject to the terms and conditions established in Act Numbered Thirty-six hundred and thirty-six, as amended by Commonwealth Act Numbered One hundred and thirty-two, and to the provisions of the Constitution, there is granted to Consuelo C. Napana, for a period of fifty years from the approval of this Act, the right, privilege, and authority to construct, maintain, and operate an electric light, heat and power plant for the purpose of generating and distributing electric light, heat, and/or power for sale within the municipality of Buenavista, Province of Agusan: *Provided,* That the holder of the franchise herein granted shall start operation thereof within one and one-half years from the approval of said franchise if she

is not an actual operator; and within six months if she is already a holder of a municipal franchise. Failure to comply with this requirement shall *ipso facto* cancel and void the franchise.

SEC. 2. It is expressly provided that in the event the Government should desire to maintain and operate for itself the plant and enterprise herein authorized, the grantee shall surrender its franchise and will turn over to the Government all serviceable equipment therein, at cost.

SEC. 3. This Act shall take effect upon its approval.

Approved, June 13, 1950.

H. No. 450

[REPUBLIC ACT NO. 509]

AN ACT DECLARING NATIONAL POLICY, AUTHORIZING THE PRESIDENT OF THE PHILIPPINES FOR A LIMITED PERIOD TO FIX CEILING PRICES OF COMMODITIES AND TO PROMULGATE RULES AND REGULATIONS REGARDING PRICES OF COMMODITIES TO EFFECTUATE SUCH POLICY, AND AUTHORIZING THE APPROPRIATION OF A CERTAIN SUM FOR THE PURPOSE.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. It is hereby declared to be the national policy during the effectivity of this Act to prevent, locally or generally, scarcity, monopolization, hoarding, injurious speculation, manipulation, and profiteering, affecting the supply, distribution and movement of both imported and locally manufactured or produced foodstuffs, textile, clothing, fuel, light and illumination, footwear, drugs, medicines, medical, dental and optical supplies, paper and paper products, school supplies, building materials, agricultural and industrial machinery, fuel and lubricants, and other articles, goods or commodities control of the price of which may be deemed essential to the public interests.

SEC. 2. There is hereby created a Price Administration Board which shall be composed of a Chairman, a Vice-Chairman who shall act as Price Administrator, who shall be the General Manager of the Philippine Relief and Trade Rehabilitation Administration, and three members, one to represent the consumers, another to represent the producers, and another to represent the distributors, who shall be appointed by the President of the Philippines with the consent of the Commission on Appointments. The Price Administrator shall be the Executive Officer of the Board.

SEC. 3. Whenever the price or prices of a commodity or commodities mentioned in section one hereof have risen or threaten to rise to an extent or in a manner inconsistent with the national policy declared in said section, the President of the Philippines, upon recommendation of the Price Administration Board, shall establish, by regulation or order, such maximum price or prices as shall be generally fair, reasonable and equitable, and promulgate such rules

and regulations as may be deemed necessary to effectuate the purpose of this Act: *Provided, however,* That the price of palay, rice and corn shall be fixed by the President upon the recommendation of the Rice Emergency Board. In determining such maximum price or prices, the President, through the Price Administration Board, shall, insofar as practicable, advise and consult with representative members of the industry which will be affected through a committee or committees, either national or regional, or both, of such industry. In the determination of such maximum prices, the President and the Price Administration Board shall take into account relevant factors such as speculative fluctuations, general increases or decreases in cost of production, distribution, transportation, storage, and other relevant factors affecting prices. Any regulation or order issued under this section may be established in such form and manner, may contain such classifications and differentiations and may provide for such adjustments and reasonable exceptions as are necessary and proper in order to effectuate the purposes of this Act.

SEC. 4. Whenever any article, goods or commodity is in short supply, or whenever there is an uncontrolled inflation of prices, the President, through the Price Administration Board or any office or officer he may designate, may, if public interests demand, order the sale thereof by the owner at ceiling prices giving first priority for its purchase to the Philippine Relief and Trade Rehabilitation Administration or order the sale by the owner thereof under the supervision of the Board, office or officer so designated, to the public of such article, goods or commodity.

SEC. 5. Whenever any article, goods or commodity is in short supply, or whenever there exists reasonable ground to believe that it will disappear in the open market, or whenever there is an uncontrolled inflation of prices, the PRATRA or any agency or instrumentality of the government including any government-owned or controlled corporation may, with the approval of the President, import directly such article, goods or commodity for distribution in the local market through such channels as it may choose, and such importation shall not be subject to any quota requirement provided for by any economic control legislation.

SEC. 6. In order to facilitate the determination of the maximum selling price of any article, goods or commodity and for the purpose of enforcing the provisions of this Act, the Price Administration Board and the local price administration committees shall, directly or through the commercial agents, the Philippine Relief and Trade Rehabilitation Administration, Internal Revenue Agents, Supervisors of the National Cooperative Administration, provincial, city and municipal treasurers and city and municipal police forces have the power: (*a*) to examine bills of lading, bills of sale, invoices, books, records and other pertinent documents owned or in the possession of any importer, producer, manufacturer, wholesaler or retailer; and (*b*) upon the issuance of a search warrant, to inspect premises, bodegas or storerooms where stocks of articles, goods or commodities whose prices are controlled are kept. The Board and the local price administration committees may, by *subpœna* or *subpœna duces tecum,* require any person to appear and testify or to appear and produce books, records and other documents, or both, and in the case of

contumacy by, or refusal to obey a *subpœna* or *subpœna duces tecum* issued to any such person, the municipal court or the justice of the peace court of the city or municipality in which such importer, wholesaler, retailer, manufacturer or producer is found or resides or transacts business, upon application, and after notice to any such person and hearing, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce books, records, and other writings, or both, and any failure to obey such order of the court shall be punished by such court as contempt thereof.

SEC. 7. Within thirty days after the approval of this Act, all importers, manufacturers or producers, wholesalers, and retailers of the articles, goods or commodities mentioned in section one hereof and of other merchandise the price of which has been placed under control shall file with the Price Administration Board or its duly authorized representative a complete and true inventory of their stock under oath. Thereafter, all expected shipment of goods, articles or commodities by importers, shall be declared under oath to the Board or its duly authorized representative within five days after receipt of the corresponding bills of lading and other shipping documents.

Importers, manufacturers or producers and wholesalers of articles, goods or commodities of the categories mentioned in section one hereof and of other articles, goods or commodities the price of which has been placed under control shall transmit to the Price Administration Board or its authorized representative a monthly report of their sales under oath.

SEC. 8. Any importer, manufacturer or producer, wholesaler or retailer who has in his possession and/or control any of the articles, goods or commodities mentioned in section one hereof or other merchandise the prices of which are under control, in excess of the quantities reported by him under section seven of this Act shall be deemed guilty of hoarding for which he shall be prosecuted and punished under this Act. The excess stock shall be considered proof of the crime and may be confiscated by the Price Administration Board and immediately disposed of as property of the state in such manner as will best serve the public interest, and the proceeds of such sale shall be deposited with the court of justice having jurisdiction over the criminal case for violation of this section.

Upon conviction of the owner or possessor of such excess stock, the said confiscation shall be considered as penalty in addition to that prescribed in section twelve hereof, but in the event the owner or possessor accused of hoarding is found innocent, the said excess stock shall be returned to him or if already sold, the proceeds of the sale shall be returned to him without any deduction.

In order to avoid the transfer of goods, articles, or commodities the prices of which have been placed under control, by an importer, manufacturer, producer, wholesaler or retailer, to persons who are not licensed merchants for the purpose of evading the provisions of this Act, the Price Administration Board shall, if in its judgment circumstances demand, determine and fix the maximum quantity of stock which any person may keep or possess for his use and that of his dependents for a given period, thereby requiring him to report under oath to the Price Administration Board or its duly authorized representative the quan-

tity of articles, goods or commodities in his possession or under his control in excess of the allowable stock granted him by the Board. Any excess stock not reported as required by this section, shall make the owner or possessor thereof liable to criminal prosecution for violation of this Act and the said excess stock shall be considered commandeered or confiscated depending upon the outcome of the criminal case.

SEC. 9. The Price Administration Board or its duly authorized representative shall, upon information made under oath that any person, corporation, partnership or association has in his or its possession and/or control any of the articles, goods or commodities the prices of which have been placed under control by the said Board, in excess of the quantities reported by him as required in this Act, and, upon the issuance of a search warrant, direct agents of the Philippine Relief and Trade Rehabilitation Administration, Bureau of Internal Revenue Agents, commercial agents of the Bureau of Commerce, supervisors of the National Cooperative Administration, or such other government agents, as may be authorized in writing by the said Board, to enter and inspect factories, warehouses, stores or any establishment where such articles, goods or commodities are kept or stored to verify such excess. The excess stock shall be seized by the Government and disposed of in the manner provided in section eight hereof.

SEC. 10. All persons engaged in the retail sale of the articles, goods, and commodities mentioned in section one hereof and of merchandise the price of which has been placed under control shall post in a conspicuous place in their establishment, store or stall a list of all such articles, goods and commodities displayed and offered for sale with their corresponding prices, and, in addition, shall attach to said merchandise a price tag in such manner as to be within the plain view of the public. All displayed merchandise shall be deemed offered for sale. No person engaged in the retail trade shall refuse to sell any such displayed merchandise.

SEC. 11. Any person not in authority who furnishes information that results in the discovery, seizure and confiscation of hoarded merchandise shall be entitled to a reward equivalent to twenty *per centum* of the value of the confiscated merchandise. Similarly, any person not in authority who furnishes information that results in the prosecution and conviction of any importer, producer or manufacturer, wholesaler, or retailer for selling any article, goods or commodity at a price in excess of the maximum price shall be entitled to a reward equivalent to twenty *per centum* of the fine, payable from such fine. Upon his request, the name of the informer shall be kept secret and any government officer or employee authorized by rules and regulations to receive the information who reveals the name of the informer shall be punished under section twelve hereof.

SEC. 12. Imprisonment for a period of not less than two months nor more than twelve years or a fine of not less than two thousand pesos nor more than ten thousand pesos, or both, shall be imposed upon any person who sells any article, goods, or commodity in excess of the maximum selling price fixed by the President; or who hoards or keeps articles, goods or commodities mentioned in section

one hereof or such other merchandise the price of which has been placed under control in excess of the quantities reported by him to the Price Administration Board; or who refuses to sell any merchandise displayed and offered for sale in his establishment, store or stall, or any merchandise which though not displayed are in stock; or who having in stock merchandise the price of which is under control shall transfer the same or make a false or fictitious sale of all or any portion thereof so as to defeat the purposes of this Act; or who fails or refuses to file with the said Board an inventory of his stock and/or to transmit copies of bills of lading or bills of sale, or who violates any provision of this Act or any rules or regulations issued by the President pursuant to the provisions of this Act: *Provided, however,* That in the case of aliens, in addition to the penalty herein provided, the offender shall be, upon final conviction, subject to immediate deportation without the necessity of any further proceedings on the part of the Deportation Board.

In the case of corporations, partnerships or associations, the President, managing director or manager shall be held criminally liable.

In addition to the penalties prescribed above, the persons, corporations, partnerships, or associations found guilty of any violation of this Act or of any rules or regulations issued by the President pursuant to this Act shall be barred from the wholesale and retail business for a period of five years for a first offense, and shall be permanently barred for the second or succeeding offenses.

Any government officer or employee who, by neglect or connivance, has enabled an importer, wholesaler, retailer or any person who has articles, goods or commodities in his control or possession, to hide or transfer his stock or any portion thereof in order to save them from being commandeered, forcibly sold, confiscated or subject to such measure as the government may deem wise and proper for the public interest, or has in any manner aided or abetted in the violation or circumvention of the provisions of this Act, shall be held criminally liable as co-principal under this section and shall, in addition, suffer the penalty of perpetual absolute disqualification to hold public office. Any government officer or employee who, being duly authorized by the Price Administration Board to act as its agent, shall divulge to any person, or make known in any other manner than may be authorized by law, any information regarding the income, method of operation or other confidential information regarding the business of any person, association or corporation, knowledge of which was acquired by him in the course of the discharge of his official duties, shall be punished by both a fine of not less than two thousand pesos nor more than ten thousand pesos and imprisonment of not less than two years nor more than ten years.

SEC. 13. All officers, agents, employees, agencies and instrumentalities of the Government, when so required by the Price Administration Board, shall act as its deputies and agents in carrying out and enforcing the provisions of this Act.

SEC. 14. If any provision of this Act or the applicability of such provision to any person or circumstance shall be held invalid, the validity of the remainder of this Act and

the applicability of such provisions to other persons or circumstances shall not be affected thereby.

SEC. 15. All acts or executive orders or parts thereof in conflict with the provisions of this Act are hereby repealed.

SEC. 16. The sum of one hundred thousand pesos, or so much thereof as may be necessary, is authorized to be appropriated out of any funds in the National Treasury not otherwise appropriated to carry out the provisions of this Act.

SEC. 17. This Act shall take effect upon its approval and shall continue in force until April 30, 1951, unless sooner terminated by concurrent resolution of Congress: *Provided, however,* That convictions rendered under this Act or under the duly promulgated orders, rules, and regulations issued pursuant thereto shall remain valid and enforceable, and prosecutions of offenses committed during the effectivity thereof shall continue and shall not be barred until terminated by conviction or acquittal of the accused.

Approved, June 13, 1950.

H. No. 225

[REPUBLIC ACT NO. 510]

AN ACT TO ESTABLISH A NATIONAL AGRICULTURAL SCHOOL IN THE MUNICIPALITY OF PANDAN, PROVINCE OF ANTIQUE AND TO AUTHORIZE THE APPROPRIATION OF FUNDS THEREFOR.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The sum of one hundred thousand pesos or so much thereof is hereby authorized to be appropriated, out of any funds in the National Treasury not otherwise appropriated, for the establishment of a National Agricultural School in the municipality of Pandan, Province of Antique.

SEC. 2. The Secretary of Education shall locate and acquire a suitable site for the said school, which may be public or private lands situated in the Province of Antique.

SEC. 3. This Act shall take effect upon its approval.

Approved, June 14, 1950.

H. No. 252

[REPUBLIC ACT NO. 511]

AN ACT GRANTING THE BOLINAO ELECTRONICS CORPORATION A TEMPORARY PERMIT TO CONSTRUCT, MAINTAIN AND OPERATE STATIONS FOR INTERNATIONAL TELECOMUNICATION AND STATIONS FOR TELEVISION IN THE PHILIPPINES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Subject to the provisions of the Constitution, the Bolinao Electronics Corporation is hereby granted a temporary permit, which shall continue in force during

the time that the Government has not established similar service at the places selected by the grantee, to construct, maintain and operate, for commercial purposes and in the public interest, stations for international telecommunication, excluding domestic telecommunication, and stations for television in the Philippines: *Provided,* That this temporary permit shall be void unless the construction of at least one international telecommunication station or one television station be begun within two years from the date of approval of this Act and be completed within four years from said date: *Provided, further,* That the grantee shall provide adequate public service time to enable the Government, through the said television stations, to reach the population on important public issues; shall assist in the functions of public information and education; shall conform to the ethics of honest enterprise; and shall not use its stations for the broadcasting of obscene or indecent language, speech, act or scene, or for the dissemination of deliberately false information or wilful misrepresentation, or to the detriment of the public health, or to incite, encourage or assist in subversive or treasonable acts.

SEC. 2. Such provisions of Act Numbered Thirty-eight hundred and forty-six, entitled "An Act providing for the regulation of radio stations and radio communications in the Philippine Islands, and for other purposes"; Act Numbered Thirty-nine hundred and ninety-seven, known as the Radio Broadcasting Law; Commonwealth Act Numbered One hundred and forty-six, known as the Public Service Act, and their amendments, as are applicable to radio broadcasting stations shall be applied, as far as practicable, to the international telecommunication stations and television stations referred to in section one.

SEC. 3. The grantee shall file a bond in the amount of fifty thousand pesos to guaranty for the full compliance and fulfillment of the conditions under which this temporary permit is granted.

SEC. 4. In the event of any competing individual, partnership or corporation receiving from the Congress a similar temporary permit in which there shall be any term or terms more favorable than those herein granted or tending to place the herein grantee at any disadvantge, then such term or terms shall, *ipso facto,* become a part of the terms hereof and shall operate equally in favor of the grantee as in the case of said competing individual, partnership or corporation.

SEC. 5. The grantee shall be liable to pay the same taxes on its real estate, buildings and personal property, exclusive of the temporary permit, as other persons or corporations are now or hereafter may be required by law to pay.

SEC. 6. In the event the Government should desire to maintain and operate for itself any or all of the stations herein authorized, the grantee shall turn over such station or stations to the Government with all the serviceable equipment therein, at cost, less reasonable depreciation.

SEC. 7. The grantee shall not require any previous censorship of any speech, play or other matter to be broadcast from its stations; but if any such speech, play or other matter should constitute a violation of the law or

infringement of a private right, the grantee shall be free from any liability, civil or criminal, for such speech, play or other matter: *Provided,* That the grantee, during any broadcast, may cut off from the air the speech, play or other matter being broadcast if the tendency thereof is to propose and/or incite treason, rebellion or sedition, or the language used therein or the theme thereof is indecent or immoral.

SEC. 8. The grantee shall not lease, transfer, grant the usufruct of, sell or assign this temporary permit nor the rights and privileges acquired thereunder to any person, firm, company, corporation or other commercial or legal entity, nor merge with any other company or corporation organized for the same purpose, without the approval of the Congress of the Philippines first had. Any corporation to which this temporary permit may be sold, transferred, or assigned, shall be subject to the corporation laws of the Philippines now existing or hereafter enacted, and any person, firm, company, corporation or other commercial or legal entity to which this temporary permit is sold, transferred, or assigned, shall be subject to all the conditions, terms, restrictions and limitations of this temporary permit as fully and completely and to the same extent as if the temporary permit has been originally granted to the said person, firm, company, corporation or other commercial or legal entity.

SEC. 9. This Act shall take effect upon its approval.

Approved, June 14, 1950.

H. No. 144

[REPUBLIC ACT No. 512]

AN ACT GRANTING THE BOLINAO ELECTRONICS CORPORATION A TEMPORARY PERMIT TO CONSTRUCT, MAINTAIN AND OPERATE RADIO BROADCASTING STATIONS IN THE PHILIPPINES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Subject to the provisions of the Constitution, as well as of Act Numbered Thirty-eight hundred and forty-six, entitled "An Act providing for the regulation of radio stations and radio communications in the Philippine Islands, and for other purposes"; Act Numbered Thirty-nine hundred and ninety-seven, known as the Radio Broadcasting Law; Commonwealth Act Numbered One hundred and forty-six, known as the Public Service Act, and their amendments, and other applicable laws, the Bolinao Electronics Corporation is hereby granted a temporary permit to construct, maintain and operate, for commercial purposes and in the public interest, radio broadcasting stations in the Philippines: *Provided,* That this temporary permit shall be void unless the construction of at least one radio broadcasting station be begun within six months from the date of approval of this Act and be completed within two years from said date: *Provided, further,* That the grantee shall provide adequate public service time to enable the Government, through the station herein

authorized, to reach the population on important public issues; shall assist in the functions of public information and education; shall conform to the ethics of honest enterprise; and shall not use said stations for the broadcasting of obscene or indecent language or speech, or for the dissemination of deliberately false information or wilful misrepresentation, or to the detriment of the public health, or to incite, encourage or assist in subversive or treasonable acts.

SEC. 2. The grantee shall file a bond in the amount of fifty thousand pesos to guaranty for the full compliance and fulfillment of the conditions under which this temporary permit is granted.

SEC. 3. In the event of any competing individual, partnership or corporation receiving from the Congress a similar temporary permit in which there shall be any term or terms more favorable than those herein granted or tending to place the herein grantee at any disadvantage, then such term or terms shall, *ipso facto,* become a part of the terms hereof and shall operate equally in favor of the grantee as in the case of said competing individual, partnership or corporation.

SEC. 4. In the event the Government should desire to maintain and operate for itself any or all of the radio broadcasting stations herein authorized, the grantee shall turn over such station or stations to the Government with all the serviceable equipment therein, at cost, less reasonable depreciation.

SEC. 5. The grantee shall be liable to pay the same taxes on its real estate, buildings and personal property, exclusive of the temporary permit, as other persons or corporations are now or hereafter may be required by law to pay.

SEC. 6. The grantee shall not require any previous censorship of any speech, play or other matter to be broadcast from its stations; but if any such speech, play or other matter should constitute a violation of the law or infringement of a private right, the grantee shall be free from any liability, civil or criminal, for such speech, play or other matter: *Provided,* That the grantee, during any broadcast may cut off from the air the speech, play or other matter being broadcast if the tendency thereof is to propose and/or incite treason, rebellion or sedition, or the language used therein or the theme thereof is indecent or immoral.

SEC. 8. This Act shall take effect upon its approval.

Approved, June 14, 1950.

H. No. 499

[REPUBLIC ACT NO. 513]

AN ACT GRANTING LORETO F. DE HEMEDES A TEMPORARY PERMIT TO ESTABLISH RADIO STATIONS FOR BROADCASTING.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. There is hereby granted to Loreto F. de Hemedes, hereinafter referred to as the "grantee", a

temporary permit to construct, maintain and operate in the Philippines, at such places as the said grantee may select, subject to approval of the Secretary of Commerce and Industry, stations for broadcasting: *Provided*, That the holder of the temporary permit herein granted shall start the operation thereof within one and a half years from the approval of said temporary permit. Failure to comply with this requirement shall *ipso facto* cancel and void the temporary permit.

SEC. 2. This temporary permit shall continue to be in force during the time that the Government has not established similar service at the places selected by the grantee.

SEC. 3. (*a*) This temporary permit shall not take effect nor shall any powers thereunder be exercised by the grantee until the Secretary of Commerce and Industry shall have alloted to the grantee the frequencies and wave lengths to be used thereunder and determined the stations to and from which each such frequency and wave length may be used, and issued to the grantee a license for such use.

(*b*) The Secretary of Commerce and Industry, on reasonable notice to the grantee, may at any time change, or cancel, or modify, in whole or in part, any or all of the allotments of frequencies or wave lengths to be used. He may take such action: (1) whenever in his judgment such frequencies and wave lengths have been used, or there is danger that they will be used by the grantee to impair electrical communication, or stifle competition, or to obtain a monopoly in electrical communication, or to secure unreasonable rates for such communication, or otherwise to violate the laws or public policy of the Republic of the Philippines; (2) whenever in his judgment the public interests of the Philippines require that such frequencies or wave lengths should be used for other purposes than those of the grantee, either by the Government of the Philippines or by other individuals or corporations licensed by it; (3) whenever in his judgment for any reason the public interests of the Philippines so require.

(*c*) The Secretary of Commerce and Industry is authorized to appoint, employ or make use of such boards, commissions, or agents as in his discretion he may select, to investigate, and determine the facts upon which he may act as aforesaid, and such boards, commissions or agents shall have the right by compulsory process of *subpœna*, to summon witnesses, administer oaths, and take evidence.

SEC. 4. The stations of the grantee shall be so constructed and operated as to effect a minimum of interference with the wave lengths selected with a view to avoiding interference with existing stations and to permit of the expansion of the grantee's services.

SEC. 5. A special right is reserved to the Government of the Republic of the Philippines, in time of war, insurrection, or domestic trouble, to take over and operate the said stations upon the order and direction of any authorized department of the Government of the Philippines without compensating the grantee for the use of said stations during the period when they shall be so operated by the said Government.

SEC. 6. The right is hereby reserved to the Government of the Philippines, through the Public Service Commission,

or such other office as may be thereunto duly authorized, to fix the maximum and minimum rates to be charged by the grantee.

SEC. 7. The grantee shall keep a separate account of the gross receipts of the business transacted by it in the Philippines, and shall furnish the Auditor General and the Treasurer of the Philippines a copy of such account not later than the thirty-first day of January of each year for the preceding year. For the purpose of auditing the accounts so rendered to the Auditor General and National Treasurer, all the books and accounts of the grantee, or duplicates thereof, so far as they relate to the business transacted in the Philippines shall be kept in the Philippines, and shall be subject to the official inspection of the Auditor General or his authorized representatives, and the audit and approval of such accounts shall be final and conclusive evidence as to the amount of said gross receipts, except that the grantee shall have the right to appeal to the courts of the Philippines, under the terms and conditions provided in the laws of the Philippines.

SEC. 8. (*a*) The grantee shall be liable to pay the same taxes on its real estate, buildings, and personal property, exclusive of the temporary permit, as other persons or corporations are now or hereafter may be required by law to pay.

(*b*) The grantee shall further be liable to pay all other taxes imposable by the National Internal Revenue Code by reason of this temporary permit.

SEC. 9. The grantee shall hold the National, provincial and municipal governments of the Philippines harmless from all claims, accounts, demands, or actions arising out of accidents or injuries, whether to property or to persons, caused by the construction or operation of the stations of the grantee.

SEC. 10. No private property shall be taken for any purpose by the grantee without proper condemnation proceedings and just compensation paid or tendered therefor, and any authority to take and occupy land contained herein shall not apply to the taking, use, or occupation of any land except such as is required for the actual necessary purposes for which this temporary permit is granted.

SEC. 11. It shall be unlawful for the grantee to use, employ, or contract, for the labor of persons held in involuntary servitude.

SEC. 12. The temporary permit hereby granted shall be subject to amendment, alteration, or repeal by the Congress of the Philippines, and the right to use and occupy public property and places hereby granted shall revert to the respective governments, upon the termination of this temporary permit, by such repeal or by forfeiture, or expiration in due course.

SEC. 13. As a condition of the granting of this temporary permit the grantee shall execute a bond in favor of the Government of the Philippines, in the sum of twenty thousand pesos, in a form and with sureties satisfactory to the Secretary of Commerce and Industry, conditioned upon the faithful performance of the grantee's obligations hereunder during the first three years of the life of this temporary permit. If, after three years from the date of

acceptance of this temporary permit, the grantee shall have fulfilled said obligations or soon thereafter as the grantee shall have fulfilled the same, the bond aforesaid shall be cancelled by the Secretary of Commerce and Industry.

SEC. 14. Acceptance of this temporary permit shall be given in writing within six months after approval of this Act. When so accepted by the grantee and upon the approval of the bond aforesaid by the Secretary of Commerce and Industry the grantee shall be empowered to exercise the privileges granted thereby.

SEC. 15. The grantee shall not lease, transfer, grant the usufruct of, sell or assign this temporary permit nor the rights and privileges acquired thereunder to any person, firm, company, corporation or other commercial or legal entity, nor merge with any other company or corporation organized for the same purpose, without the approval of the Congress of the Philippines first had. Any corporation to which this temporary permit may be sold, transferred, or assigned, shall be subject to the corporation laws of the Philippines now existing or hereafter enacted, and any person, firm, company, corporation or other commercial or legal entity to which this temporary permit is sold, transferred, or assigned shall be subject to all the conditions, terms, restrictions and limitations of this temporary permit as fully and completely and to the same extent as if the temporary permit has been originally granted to the said person, firm, company, corporation or other commercial or legal entity.

SEC. 16. This temporary permit shall not be interpreted to mean an exclusive grant of the privileges herein provided for.

SEC. 17. The grantee shall not require any previous censorship of any speech, play or other matter to be broadcast from its stations; but if any such speech, play or other matter should constitute a violation of the law or infringement of a private right, the grantee shall be free from any liability, civil or criminal, for such speech, play or other matter: *Provided,* That the grantee, during any broadcast may cut off from the air the speech, play or other matter being broadcast if the tendency thereof is to propose and/or incite treason, rebellion or sedition, or the language used therein or the theme thereof is indecent or immoral.

SEC. 18. This Act shall take effect upon its approval.

Approved, June 14, 1950.

H. No. 588

[REPUBLIC ACT NO. 514]

AN ACT GRANTING THE MINDANAO COLLEGES A TEMPORARY PERMIT TO ESTABLISH A RADIO BROADCASTING STATION.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. There is hereby granted to the Mindanao Colleges, hereinafter referred to as the "grantee," a

temporary permit to construct, maintain and operate in the Philippines, at such place as the said grantee may select, subject to the approval of the Secretary of Commerce and Industry, a radio broadcasting station for commercial and educational purposes.

SEC. 2. This temporary permit shall continue to be in force during the time that the government has not established similar service at the place selected by the grantee, and is made upon the express condition that the same shall be void unless the construction of said station be begun within one and a half years from the approval of said temporary permit.

SEC. 3. This grant and concession is likewise made upon the express condition that the grantee shall contribute to the public welfare, shall assist in the functions of public information and education, shall conform to the ethics of honest enterprise, and shall not use its station for the dissemination of deliberately false information or willful misrepresentation, or to the detriment of the public health, or to incite, encourage or assist in subversive or treasonable acts.

SEC. 4. (*a*) This temporary permit shall not take effect nor shall any powers thereunder be exercised by the grantee until the Secretary of Commerce and Industry shall have alloted to the grantee the frequencies and wave lengths to be used thereunder and issued to the grantee license for such use.

(*b*) The Secretary of Commerce and Industry, on reasonable notice to the grantee, may at any time change, or cancel, or modify, in whole or in part, any or all of the allotments of frequencies or wave lengths to be used. He may take such action: (1) whenever in his judgment such frequencies and wave lengths have been used, or there is danger that they will be used by the grantee to impair electrical communication, or stifle competition, or to obtain a monopoly in electrical communication, or to secure unreasonable rates for such communication, or otherwise to violate the laws or public policy of the Philippine Republic; (2) whenever in his judgment the public interest of the Philippines requires that such frequencies or wave lengths should be used for other purposes than those of the grantee, either by the Government of the Philippines or by other individuals or corporations licensed by it; (3) whenever in his judgment for any reason the public interests of the Philippines so requires.

(*c*) The Secretary of Commerce and Industry is authorized to appoint, employ or make use of such boards, commissions, or agents as in his discretion he may select, to investigate, and determine the facts upon which he may act as aforesaid, and such boards, commissions and agents shall have the right by compulsory process of *subpoena,* to summon witnesses, administer oaths, and take evidence.

SEC. 5. The station of the grantee shall be so constructed and operated that a minimum of interference will result and the wave lengths selected with a view to avoiding interference with existing stations and to permit of the expansion of the grantee's services.

SEC. 6. A special right is reserved to the Government of the Republic of the Philippines, in time of war, insurrection, or domestic trouble, to take over and operate the said station upon the order and direction of any authorized department of the Government of the Philippines without compensating the grantee for the use of said station during the period when they shall be so operated by the said Government.

SEC. 7. The right is hereby reserved to the Government of the Philippines, through the Public Service Commission, or such other office as may be thereunto duly authorized, to fix the maximum and minimum rates to be charged by the grantee.

SEC. 8. The grantee shall keep an account of the gross receipts of the business transacted by it, and shall furnish to the Auditor General and the Treasurer of the Philippines a copy of such account not later than the thirty-first day of January of each year for the preceding year. For the purpose of auditing accounts so rendered to the Auditor General and National Treasurer, all of the books and accounts of the grantee shall be subject to the official inspection of the Auditor General or his authorized representatives, and the audit and approval of such accounts shall be final and conclusive evidence as to the amount of said gross receipts, except that the grantee shall have the right to appeal to the Courts, under the terms and conditions provided in the laws of the Philippines.

SEC. 9. (*a*) The grantee shall be liable to pay the same taxes, unless exempted therefrom, on its real estate, buildings, and personal property, exclusive of the temporary permit, as other persons or corporations are now or hereafter may be required by law to pay.

(*b*) The grantee shall further pay to the Treasurer of the Philippines each year, within ten days after the audit and approval of the accounts as prescribed in this Act, one and one-half *per centum* of all gross receipts from business transacted under this temporary permit by the said grantee in the Philippines.

SEC. 10. The grantee shall hold the National, provincial, and municipal governments of the Philippines harmless from all claims, accounts, demands, or actions arising out of accidents or injuries, whether to property or to persons, caused by the construction or operation of the station of the grantee.

SEC. 11. The grantee shall be subject to the corporation laws of the Philippines now existing or hereafter enacted.

SEC. 12. The grantee shall not issue stocks or bonds except in exchange for actual cash or for property at a fair valuation equal to the par value of the stocks or bonds so issued, and shall not declare stock or bond dividends.

SEC. 13. The temporary permit hereby granted shall be subject to amendment, alteration, or repeal by the Congress of the Philippines when the public interest so requires.

SEC. 14. The grantee shall execute a bond in favor of the Government of the Philippines in the sum of fifty

thousand pesos, in a form and with sureties satisfactory to the Secretary of Commerce and Industry, conditioned upon the faithful performance of the grantee's obligations hereunder during the first three years of the life of this temporary permit. If, after three years from the date of acceptance of this temporary permit, the grantee shall have fulfilled said obligations, or as soon thereafter as the grantee shall have fulfilled the same, the bond aforesaid shall be cancelled by the Secretary of Commerce and Industry.

SEC. 15. Acceptance of this temporary permit shall be given in writing within six months after the approval of this Act. When so accepted by the grantee and upon the approval of the bond aforesaid by the Secretary of Commerce and Industry the grantee shall be empowered to exercise the privileges granted thereby.

SEC. 16. The grantee shall not lease, transfer, grant the usufruct of, sell or assign this temporary permit nor the rights and privileges acquired thereunder to any person, firm, company, corporation or other commercial or legal entity, nor merge with any other company or corporation organized for the same purpose, without the approval of the Congress of the Philippines first had.

Any corporation to which this temporary permit may be sold, transferred, or assigned, shall be subject to the corporation laws of the Philippines now existing or hereafter enacted, and any person, firm, company, corporation or other commercial or legal entity to which this temporary permit is sold, transferred, or assigned shall be subject to all the conditions, terms, restrictions and limitations of this temporary permit as fully and completely and to the same extent as if the temporary permit had been originally granted to the said person, firm, company, corporation or other commercial or legal entity.

SEC. 17. The grantee shall not require any previous censorship of any speech, play or other matter to be broadcast from its station; but if any such speech, play or other matter should constitute a violation of the law or infringement of a private right, the grantee shall be free from any liability, civil or criminal, for such speech, play or other matter: *Provided,* That the grantee, during any broadcast may cut off from the air the speech, play or other matter being broadcast if the tendency thereof is to propose and/or incite treason, rebellion or sedition, or the language used therein or the theme thereof is indecent or immoral.

SEC. 18. The term Public Service Commission, as herein used, means said commission as from time to time constituted, or any other governmental body as from time to time constituted or hereafter created in place of or to succeed the said Public Service Commission.

SEC. 19. This temporary permit shall not be interpreted as an exclusive grant of the privileges herein provided for.

SEC. 20. This Act shall take effect upon its approval.

Approved, June 14, 1950.

H. No. 896

[REPUBLIC ACT NO. 515]

AN ACT GRANTING THE SILLIMAN UNIVERSITY A TEMPORARY PERMIT TO ESTABLISH, MAINTAIN AND OPERATE RADIO BROADCASTING STATIONS FOR NON-SECTARIAN AND NON-PROFIT EDUCATIONAL PURPOSES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The Silliman University, hereinafter referred to as "grantee," is hereby granted a temporary permit to construct, maintain and operate, subject to the approval of the Secretary of Commerce and Industry, radio broadcasting stations in the City of Dumaguete and in the Municipality of Sibulan, Province of Negros Oriental, and the corresponding electrical communication laboratories in said province, for educational and cultural purposes only, and which shall be non-profit and non-sectarian.

SEC. 2. This temporary permit shall continue for a period of twenty-five years from the date the said stations shall be put in operation, and is made upon the express condition that the same shall be void unless the construction of said stations be begun within six months from the date of approval of this Act and be completed within two years from said date.

SEC. 3. This temporary permit is likewise made upon the express condition that the grantee shall contribute to the public welfare, shall assist in the functions of public information and education, shall conform to the ethics of honest enterprise, and shall not use its stations for the dissemination of deliberately false information or wilful misrepresentation, or to the detriment of the public health, or to incite, encourage or assist in subversive or treasonable acts.

SEC. 4. (*a*) The grantee's radio stations shall not be put in actual operation until the Secretary of Commerce and Industry shall have allotted to the grantee the frequencies and wave lengths to be used under this temporary permit and issued to the grantee a license for such use.

(*b*) The Secretary of Commerce and Industry, on reasonable notice to the grantee, may at any time change or cancel, or modify, in whole or in part, any or all of the allotments of frequencies or wave lengths to be used. He may take such action: (1) whenever in his judgment such frequencies and wave lengths have been used, or there is danger that they will be used by the grantee to impair electrical communication, or stifle competition, or to obtain a monopoly in electrical communication, or otherwise to violate the laws or public policy of the Philippine Republic; (2) whenever in his judgment the public interest of the Philippines requires that such frequencies or wave lengths should be used for other purposes than those of the grantee, either by the Government of the Philippines or by other individuals or corporations licensed by it; and (3) whenever in his judgment for any reason the public interest of the Philippines so requires.

(*c*) The Secretary of Commerce and Industry is authorized to appoint, employ or make use of such boards,

commissions, or agents as in his discretion he may select, to investigate, and determine the facts upon which he may act as aforesaid, and such boards, commissions and agents shall have the right by compulsory process of *subpoena*, to summon witnesses, administer oaths, and take evidence.

SEC. 5. The radio stations of the grantee shall be so constructed and operated that a minimum of interference will result and the wave lengths selected with a view to avoiding interference with existing radio stations and to permit of the expansion of the grantee's services.

SEC. 6. A special right is reserved to the Government of the Republic of the Philippines, in time of war, insurrection, or domestic trouble, to take over and operate the said stations upon the order and direction of any authorized department of the Government of the Philippines without compensating the grantee of the use of said stations during the period when they shall be so operated by the said Government.

SEC. 7. The grantee shall be liable to pay the same taxes, unless exempted therefrom, on its real estate, buildings, and personal property, exclusive of the temporary permit, as other persons or corporations are now or hereafter may be required by law to pay.

SEC. 8. The grantee shall hold the National, provincial, and municipal governments of the Philippines harmless from all claims, accounts, demands, or actions arising out of accidents or injuries, whether to property or to persons, caused by the construction or operation of the grantee's radio stations.

SEC. 9. The grantee shall be subject to the corporation laws of the Philippines now existing or hereafter enacted.

SEC. 10. The temporary permit hereby granted shall be subject to amendment, alteration, or repeal by the Congress of the Philippines when the public interest so requires.

SEC. 11. Acceptance of this temporary permit shall be given in writing by the grantee within six months after the approval of this Act. When so accepted, the grantee shall be empowered to exercise the privileges granted thereby.

SEC. 12. The grantee shall not lease, transfer, grant the usufruct of, sell or assign this temporary permit nor the rights and privileges acquired thereunder to any person, firm, company, corporation or other commercial or legal entity, nor merge with any other company or corporation organized for the same purpose, without the approval of the Congress of the Philippines first had. Any corporation to which this temporary permit may be sold, transferred, or assigned, shall be subject to the corporation laws of the Philippines now existing or hereafter enacted, and any person, firm, company, corporation or other commercial or legal entity to which this temporary permit is sold, transferred, or assigned shall be subject to all the conditions, terms, restrictions and limitations of this temporary permit as fully and completely and to the same extent as if the temporary permit had been originally granted to the said person, firm, company, corporation or other commercial or legal entity.

SEC. 13. This temporary permit shall not be interpreted as an exclusive grant of the privileges herein provided for.

SEC. 14. This Act shall take effect upon its approval.

Approved, June 14, 1950

H. No. 968

[REPUBLIC ACT No. 516]

AN ACT TO AMEND OR REPEAL CERTAIN SECTIONS OF COMMONWEALTH ACT NUMBERED FOUR HUNDRED AND EIGHT, OTHERWISE KNOWN AS THE ARTICLES OF WAR, AS AMENDED BY REPUBLIC ACT NUMBERED TWO HUNDRED AND FORTY- TWO.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Article one of Commonwealth Act Numbered Four hundred and eight is hereby amended to read as follows:

"ARTICLE 1. *Definitions.*—The following words when used in these articles shall be construed in the sense indicated in this article, unless the context shows that a different sense is intended, namely:

"(*a*) The word 'officer' shall be construed to refer to a commissioned officer, including a commissioned member of the nurse corps;

"(*b*) The word 'soldier' shall be construed as including a noncommissioned officer, a private, or any other enlisted man;

"(*c*) The word 'company' shall be understood as including a troop, battery or commissioned vessels;

"(*d*) The word 'battalion' shall be understood as including a squadron, air or naval."

SEC. 2. Article four of the same Act as amended by Republic Act Numbered Two hundred and forty-two, is hereby further amended to read as follows:

"ART. 4. *Who may serve on courts-martial.*—All officers in active duty in the Armed Forces of the Philippines or in the Philippine Constabulary shall be competent to serve on courts-martial for the trial of any person who may lawfully be brought before such courts for trial.

"Enlisted persons in the active military service of the Armed Forces of the Philippines or of the Philippine Constabulary shall be competent to serve on general and special courts-martial for the trial of enlisted persons or trainees when requested in writing by the accused at any time prior to the convening of the court: *Provided,* That the competency of enlisted men to serve shall be subject to the conditions prescribed in this and other articles, and in no case shall the number of enlisted men detailed exceed one-third of the total membership of the court.

"When appointing courts-martial, the appointing authority shall detail as members thereof those officers of the command and, when eligible and available, those enlisted persons of the command who, in his opinion, are best qualified for the duty by reason of age, training, experience, and judicial temperament; and officers and enlisted persons having less than two years' service shall not, if it

can be avoided without manifest injury to the service, be appointed as members of courts-martial in excess of the minority membership thereof. No person shall sit as member of a general or special court-martial when he is the accuser or a witness for the prosecution."

SEC. 3. Articles five and six of the same Act are hereby amended by deleting from each of said articles the word "officers" and substituting therefor the word "members."

SEC. 4. Article eight of the same Act as amended by Republic Act Numbered Two hundred and forty-two, is hereby further amended to read as follows:

"ART. 8. *General courts-martial.*—The President of the Philippines, the Chief of Staff of the Armed Forces of the Philippines, the Chief of Constabulary and, when empowered by the President, the commanding officer of a major command or task force, the commanding officer of a division, the commanding officer of a military area, the superintendent of the Military Academy, the commanding officer of a separate brigade or body of troops may appoint general courts-martial; but when any such commander is the accuser or the prosecutor of the person or persons to be tried, the court shall be appointed by superior competent authority.

"The authority appointing a general court-martial shall detail as one of the members thereto a member of the bar, hereafter called law member, who shall be an officer of the Judge Advocate General's Service or an officer of some other branch of the service who is a member of the bar and certified by the Judge Advocate General to be qualified for such detail. No general court-martial shall receive evidence or vote upon its findings or sentence in the absence of the law member regularly detailed. The law member, in addition to his duties as a member, shall perform such other duties as the President may by regulations prescribe."

SEC. 5. Article nine of the same Act is hereby amended to read as follows:

"ART. 9. *Special courts-martial.*—The commanding officer of a major command, task force, military area, or division and, when empowered by the President, the commanding officer of a garrison, fort, camp, brigade, regiment, detached battalion or squadron, or other detached command or place, zone or commissioned vessel where troops are on duty may appoint special courts-martial; but when any such commanding officer is the accuser or the prosecutor of the person or persons to be tried, the court shall be appointed by superior authority, and may in any case be appointed by superior authority when by the latter deemed desirable."

SEC. 6. Article ten of the same Act is hereby amended to read as follows:

"ART. 10. *Summary courts-martial.*—The commanding officer of a garrison, fort, camp, or other place where troops are on duty, and the commanding officer of a regiment, commissioned vessel, detached battalion, detached company, or other detachment may appoint summary courts-martial; but such summary courts-martial may in any case be appointed by superior authority when by the

latter deemed desirable: *Provided,* That when but one officer is present with a command he shall be the summary court-martial of that command and shall hear and determine cases brought before him."

SEC. 7. Article twelve of the same Act is hereby amended to read as follows:

"ART. 12. *General courts-martial.*—General courts-martial shall have power to try any person subject to military law for any crime or offense made punishable by these articles, and any other person who by the law of war is subject to trial by military tribunals: *Provided,* That no officer shall be brought to trial before a general court-martial appointed by the Superintendent of the Military Academy: *Provided, further,* That general courts-martial shall have the power to adjudge any punishment authorized by law or the customs of the service, including a bad-conduct discharge, and that in the Philippine Navy, general courts-martial may impose deprivation of liberty on shore as a punishment and in imposing a sentence of confinement may include in the sentence solitary confinement not exceeding thirty days, or solitary confinement on diminished rations not exceeding thirty days: *And provided, further,* That the officer competent to appoint a general court-martial for the trial of any particular case may, when in his judgment the interest of the service shall so require, cause any case to be tried by a special court-martial notwithstanding the limitations upon the jurisdiction of the special court-martial as to offenses set out in article thirteen; but the limitations upon jurisdiction as to persons and upon punishing power set out in said article shall be observed."

SEC. 8. Article thirteen of the same Act is hereby amended to read as follows:

"ART. 13. *Special courts-martial.*—Special courts-martial shall have power to try any person subject to military law for any crime or offense not capital made punishable by these articles. Special courts-martial shall not have power to adjudge dishonorable discharge or dismissal or confinement in excess of six months, nor to adjudge forfeiture of more than two-thirds pay per month for a period of not exceeding six months. Subject to approval of the sentence by an officer exercising general court-martial jurisdiction and subject to appellate review by the Judge Advocate General, a special court-martial may adjudge a bad-conduct discharge in addition to any other authorized punishment: *Provided,* That a bad-conduct discharge shall not be adjudged by a special court-martial unless a complete record of the proceedings of and testimony admitted by the Court is taken in the case: *And provided, further,* That in the Philippine Navy, special courts-martial may also impose deprivation of liberty on shore as a punishment and in imposing a sentence of confinement may include in the sentence solitary confinement not exceeding thirty days, or solitary confinement on diminished rations not exceeding thirty days."

SEC. 9. Article fourteen of the same Act as amended by Republic Act Numbered Two hundred and forty-two, is hereby further amended to read as follows:

"ART. 14. *Summary courts-martial.*—Summary courts-martial shall have power to try any person subject to

military law, except an officer, a cadet, a flying cadet or probationary second lieutenant, for any crime or offense not capital made punishable by these article: *Provided,* That non-commissioned officers shall not, if they object thereto, be brought to trial before a summary court-martial without the authority of the officer competent to bring them to trial before a special court-martial: *Provided, further,* That the President may, by regulations, except from the jurisdiction of summary courts-martial any class or classes of persons subject to military law.

"Summary courts-martial shall not have power to adjudge confinement in excess of one month, restriction to limits for more than three months or forfeiture or detention of more than two-thirds of one month's pay: *Provided,* That in the Philippine Navy, summary courts-martial may also impose deprivation of liberty on shore as a punishment and in imposing a sentence of confinement may include in the sentence solitary confinement not exceeding fifteen days, or solitary confinement on diminished rations not exceeding fifteen days."

SEC. 10. Article sixteen of the same Act is hereby amended to read as follows:

"ART. 16. *Persons in the military service, how triable.*— Officers shall be triable by general and special courts-martial, and in no case shall an officer, when it can be avoided, be tried by officers inferior to him in rank. No enlisted person may sit as a member of a court-martial for the trial of another enlisted person or trainee who is assigned to the same company."

SEC. 11. Article thirty of the same Act is hereby amended to read as follows:

"ART. 30. *Method of voting.*—Voting by members of a general or special court-martial upon questions of challenge, on the findings, and on the sentence shall be by secret written ballot. The junior member of the court shall in each case count the votes, which count shall be checked by the president, who shall forthwith announce the result of the ballot to the members of the court. The law member of a general court-martial, or the president of a special court-martial, shall rule in open court upon interlocutory questions, other than challenge, arising during the proceedings: *Provided,* That if any member objects to a ruling of the law member of a general court-martial upon a motion for a finding of not guilty or on the question of the accused's sanity, or if any member objects to any ruling of the president of a special court-martial as hereinabove provided, the court shall be cleared and closed and the question decided by a majority vote, *viva voce,* beginning with the junior in rank. A ruling made by the law member of a general court-martial upon any interlocutory question other than a motion for a finding of not guilty, or the accused's sanity, shall be final and shall constitute the ruling of the court; but the law member in any case may consult with the court, in closed session, before making a ruling and may change any ruling made at any time during the trial. It shall be the duty of the law member of a general court-martial or the president of a special court-martial, before a vote is taken, to advise the court that the accused must be presumed to be innocent until his guilt is established by legal and competent evidence beyond a reasonable doubt and that in the case being considered, if there is a

reasonable doubt as to the guilt of the accused, the doubt shall be resolved in the accused's favor and he shall be acquitted; if there is a reasonable doubt as to the degree of guilt, the finding must be in a lower degree as to which there is no such doubt; that the burden of proof to establish the guilt of the accused is upon the government."

SEC. 12. Article thirty-eight of the same Act as amended by Republic Act Numbered Two hundred and forty-two, is hereby further amended to read as follows:

"ART. 38. *As to time.*—Except for desertion, murder or rape committed in time of war, or for mutiny or for war offenses, no person subject to military law shall be liable to be tried or punished by a court-martial for any crime or offense committed more than two years before the arraignment of such person: *Provided,* That for desertion in time of peace or for any crime or offense punishable under article ninety-four and ninety-five of these articles, the period of limitations upon trial and punishment by courts-martial shall be three years from the time the offense was committed: *Provided, further,* That the period of any absence of the accused from the jurisdiction of the Philippines, and also any period during which by reason of some manifest impediment the accused shall not have been amenable to military justice, shall be excluded in computing the aforesaid periods of limitations: *And provided, also,* That in any case of any offense the trial of which in time of war shall be certified by the Secretary of National Defense to be detrimental to the prosecution of the war or inimical to the nation's security, the periods of limitations herein provided for the trial of the said offense shall be extended to the duration of the war and six months thereafter: *Provided, finally,* That this article shall not have the effect to authorize the trial or punishment for any crime or offense barred by the provisions of existing law."

SEC. 13. Article forty-five of the same Act is hereby amended to read as follows:

"ART. 45. *Action by convening authority.*—Under such regulations as may be prescribed by the President, every record of trial by general court-martial or military commission, or record of trial by special court-martial in which a bad-conduct discharge has been adjudged and approved by the authority appointing the court, received by a reviewing or confirming authority shall be referred by him, before he acts thereon, to his staff judge advocate or the Judge Advocate General. No sentence of a court-martial shall be carried into execution until the same shall have been approved by the officer appointing the court or by the officer commanding for the time being: *Provided,* That no sentence of a special court-martial which includes a bad-conduct discharge shall be carried into execution until, in addition to the approval of the convening authority, the same shall have been approved by an officer authorized to appoint a general court-martial."

SEC. 14. Article fifty of the same Act as amended by Republic Act Numbered Two hundred and forty-two, is hereby further amended by (1) changing the title thereof so as to read: "*Appellate Review*"; (2) deleting entirely from the said article the fourth paragraph beginning with the words "When the President or any reviewing or con-

firming authority disapproves or vacates a sentence the execution of which has not heretofore been duly entered" and ending with the words "to the Chief of Staff for the action of the President", and (3) by amending the third paragraph thereof to read as follows:

"No authority shall order the execution of any other sentence of a court-martial involving the penalty of death, dismissal not suspended, dishonorable discharge not suspended, bad-conduct discharge not suspended, or confinement in a penitentiary, unless and until the board of review shall, with the approval of the Judge Advocate General, have held the record of trial upon which such sentence is based legally sufficient to support the sentence; except that the proper reviewing or confirming authority may, upon his approval of a sentence involving dishonorable discharge, bad-conduct discharge or confinement in a penitentiary, order its execution if it is based solely upon findings of guilty of a charge or charges and a specification or specifications to which the accused has pleaded guilty. When the board of review, with the approval of the Judge Advocate General, holds the record in a case in which the order of execution has been withheld under the provisions of this paragraph legally sufficient to support the findings and sentence, the Judge Advocate General shall so advise the reviewing or confirming authority from whom the record was received, who may thereupon order the execution of the sentence. When in a case in which the order of execution has been withheld under the provisions of this paragraph, the board of review holds the record of trial legally insufficient to support the findings or sentence, either in whole or in part, or that errors of law have been committed injuriously affecting the substantial rights of the accused, and the Judge Advocate General concurs in such holding of the board of review, such findings and sentence shall be vacated in whole or in part in accord with such holding and the recommendations of the Judge Advocate General thereon, and the record shall be transmitted through the proper channels to the convening authority for a rehearing or such other action as may be proper. In the event that the Judge Advocate General shall not concur in the holding of the board of review, the Judge Advocate General shall forward all the papers in the case, including the opinion of the board of review and his dissent therefrom, directly to the Chief of Staff for the action of the President, who may confirm the action of the reviewing authority or confirming authority below, in whole or in part, with or without remission, mitigation, or commutation, or may disapprove, in whole or in part, any finding of guilty, and may disapprove or vacate the sentence, in whole or in part."

SEC. 15. Two new articles, designated as article fifty-A and article fifty-B, are hereby inserted between articles fifty and fifty-one of the same Act, as amended, which shall read as follows:

"ART. 50–A. *Rehearing.*—When the President or any reviewing or confirming authority disapproves or vacates a sentence the execution of which has not heretofore been duly ordered, he may authorize or direct a rehearing. Such rehearing shall take place before a court composed of officers, or officers and enlisted men, not members of the

court which first heard the case. Upon such rehearing the accused shall not be tried for any offense of which he was not found guilty by the first court, and no sentence in excess of or more severe than the original sentence shall be imposed unless the sentence be based upon a finding of guilty of an offense not considered upon the merits in the original proceedings: *Provided,* That such rehearing shall be had in all cases where a finding and sentence have been vacated by reason of the action of the board of review approved by the Judge Advocate General holding the record of trial, legally insufficient to support the findings or sentence, or errors of law have been committed injuriously affecting the substantial rights of the accused unless in accord with such action, and the recommendations of the Judge Advocate General thereon, the findings or sentence are approved in part only, or the record is returned for revision, or unless the case is dismissed by order of the reviewing or confirming authority. After any such rehearing had on the order of the President, the record of trial shall, after examination by the board of review, be transmitted by the Judge Advocate General, with the Board's opinion and his recommendations to the Chief of Staff for the action of the President.

"ART. 50–B. *Petition for new trial.*—Under such regulations as the President may prescribe, the Chief of Staff or the Chief of Constabulary is authorized upon application of an accused person, and upon good cause shown, in his discretion, to grant a new trial, or to vacate a sentence, restore rights, privileges, and property affected by such sentence, and substitute for a dismissal, dishonorable discharge, or bad-conduct discharge previously executed a form of discharge authorized for administrative issuance, in any court-martial case in which application is made within one year after final disposition of the case upon initial appellate review: *Provided,* That with regard to cases involving offenses committed during World War II, the application for new trial may be made within one year after termination of the war, or after its final disposition upon initial appellate review as herein provided, whichever is the later: *Provided,* That only one such application for a new trial may be entertained with regard to any one case: *And provided, further,* That all action by the Chief of Staff or the Chief of Constabulary pursuant to this article, and all proceedings, findings, and sentences on new trials under this article, as approved, reviewed or confirmed under articles forty-five, forty-six, forty-seven, forty-eight and fifty, and all dismissals and discharges carried into execution pursuant to sentences adjudged on new trials and approved, reviewed, or confirmed, shall be final and conclusive; and orders publishing the action of the Chief of Staff or the Chief of Constabulary or the proceedings on new trial, and all action taken pursuant to such proceedings, shall be binding upon all departments, courts, agencies, and officers of the Government of the Philippines."

SEC. 16. Article fifty-two of the same Act is hereby amended to read as follows:

"ART. 52. *Suspension of sentence.*—The authority competent to order the execution of the sentence of a court-martial may, at the time of the approval of such sentence, or at any time thereafter, while the sentence is being served, suspend the execution, in whole or in part, of any

such sentence as does not extend to death, and may restore the person under sentence to duty during such suspension. A sentence, or any part thereof, which has been so suspended may be remitted, in whole or in part, by the officer who suspended the same except in cases of persons confined in the penitentiaries, by his successor in office, or by any officer exercising appropriate court-martial jurisdiction over the command in which the person under sentence may be serving at the time, and, subject to the foregoing exceptions, the same authority may vacate the order of suspension at any time and order the execution of the sentence or the suspended part thereof in so far as the same shall not have been previously remitted, subject to like power of suspension. The death or honorable discharge of a person under a suspended sentence shall operate as a complete remission of any unexecuted or unremitted part of such sentence: *Provided*, That no sentence approved or confirmed by the President shall be suspended by any other authority."

SEC. 17. A new article, to be designated as Article eighty-eight–A, is hereby inserted between Articles eigthy-eight and eighty-nine of the same Act, which shall read as follows:

"ART. 88–A. *Unlawfully influencing action of court.*— Any authority appointing a general, special, or summary court-martial, or any other commanding officer, who shall censure, reprimand, or admonish such court, or any member thereof, with respect to the findings or sentence adjudged by the court, or with respect to any other exercise, by such court or any member thereof, of its or his judicial responsibility, shall be punished as a court-martial may direct. Any person subject to military law who shall attempt to coerce or unlawfully influence the action of a court-martial or any military court or commission, or any member thereof, in reaching the findings or sentence in any case, or the action of an appointing or reviewing or confirming authority with respect to his judicial act, shall be punished as a court-martial may direct."

SEC. 18. Article ninety-five of the same Act as amended by Republic Act Numbered Two hundred and forty-two, is hereby further amended to read as follows:

"ART. 95. *Frauds against the Government.*—Any person subject to military law who makes or causes to be made any claim against the Government or any officer thereof, knowing such claim to be false or fraudulent; or

"Who presents or causes to be presented to any person in the civil or military service thereof, for approval or payment, any claim against the Government, or any officer thereof, knowing such claim to be false or fraudulent; or

"Who enters into any agreement or conspiracy to defraud the Government by obtaining, or aiding others to obtain the allowance or payment of any false or fraudulent claim; or

"Who, for the purpose of obtaining, or aiding others to obtain the approval, allowance, or payment of any claim against the Government or against any officer thereof, makes or uses, procures, or advises the making or use of, any writing or other paper knowing the same to contain any false or fraudulent statements; or

"Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the Government or any officer thereof, makes or

procures, or advises the making of, any oath to any fact or to any writing or other paper knowing such oath to be false; or

"Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the Government or any officer thereof, forges or counterfeits, or procures or advises the forging or counterfeiting of any signature upon any writing or other paper, or uses; or procures, or advises the use of any such signature, knowing the same to be forged or counterfeited; or

"Who, having charge, possession, custody or control of any money or other property of the Government furnished or intended for the military service thereof, knowingly delivers, or causes to be delivered, to any person having authority to receive the same, any amount thereof less than that for which he receives a certificate or receipt; or

"Who, being authorized to make or deliver any paper certifying the receipt of any property of the Government furnished or intended for the military service thereof, makes or delivers to any person such writing, without having full knowledge of the truth of the statements therein contained and with intent to defraud the Government; or

"Who steals, embezzles, knowingly and willfully misappropriates, applies to his own use or benefit or wrongfully or knowingly sells or disposes of any ordnance, arms, equipment, ammunition, clothing, subsistence stores, money, or other property of the Government furnished or intended for the military service thereof; or

"Who knowingly purchases or receives in pledge for any obligation or indebtedness from any soldier, officer, or other person who is a part of or employed in the Armed Forces of the Philippines or in the Philippine Constabulary, any ordnance, arms, equipment, ammunition, clothing, subsistence stores, or other property of the Government, such soldier, officer, or other person not having lawful right to sell or pledge the same; or

"Who enters into any agreement or conspires to commit any of the offenses aforesaid;

"Shall, on conviction thereof, be punished by fine or imprisonment, or by such other punishment as a court-martial may adjudge, or by any or all of said penalties. And if any person, being guilty of any of the offenses aforesaid while in the service of the Armed Forces of the Philippines or of the Philippine Constabulary receives his discharge or is dismissed from the service, he shall continue to be liable to be arrested and held for trial and sentence by a court-martial in the same manner and to the same extent as if he had not received such discharge nor been dismissed. And if any officer, being guilty, while in the service of the Armed Forces of the Philippines or of the Philippine Constabulary of embezzlement of ration savings, post exchange, company, or other like funds, or of embezzlement of money or other property intrusted to his charge by an enlisted man or men, receives his discharge, or is dismissed, or is dropped from the rolls, he shall continue to be liable to be arrested and held for trial and sentence by a court-martial in the same manner and to the same extent as if he had not been so discharged, dismissed, or dropped from the rolls."

SEC. 19. Article one hundred and five of the same Act as amended by Republic Act Numbered Two hundred and forty-two, is hereby further amended to read as follows:

"ART. 105. *Disciplinary powers of commanding officers.*—Under such regulations as the President may prescribe, the commanding officer of any detachment, company, squadron, commissioned vessel, or higher command may, for minor offenses, impose disciplinary punishments upon persons of his command without the intervention of a court-martial, unless the accused demands trial by court-martial.

"The disciplinary punishments authorized by this article may include admonition, reprimand, withholding of privileges for not exceeding one week, extra fatigue for not exceeding one week, restriction to certain specified limits for not exceeding one week, hard labor without confinement for not exceeding one week, or any combination of such punishments for not exceeding one week, but shall not That in the Philippine Navy, a commander of a commisinclude forfeiture of pay or confinement under guard; except that any officer exercising general court-martial jurisdiction may, under the provisions of this article, also impose upon an officer of his command below the grade of brigadier general a forfeiture of not more than one-half of such officer's monthly pay for three months: *Provided,* sioned vessel may also impose as a punishment on a commissioned officer, suspension from duty, arrest or confinement such suspension, arrest or confinement not to continue longer than ten days: *And provided, further,* That under this article no commander of a commissioned vessel shall impose on any petty officer or person of inferior rating for a single offense, or at any one time, any other than one of the following punishments:

"First. Confinement not exceeding ten days.

"Second. Solitary confinement, on diminished rations, not exceeding five days.

"Third. Solitary confinement not exceeding seven days.

"Fourth. Deprivation of liberty on shore.

"A person punished under authority of this article, who deems his punishments unjust or disproportionate to the offense, may through the proper channel, appeal to the next superior authority, but may in the meantime be required to undergo the punishment adjudged. The commanding officer who imposes the punishment, his successor in command and superior authority, shall have the power to mitigate or remit any unexecuted portion of the punishment. The imposition and enforcement of disciplinary punishment under authority of this article for any act or omission shall not be a bar to trial by court-martial for a crime or offense growing out of the same act or omission; but the fact that a disciplinary punishment has been enforced may be shown by the accused upon trial, and when so shown shall be considered in determining the measures of punishment to be adjudged in the event of a finding of guilty."

SEC. 20. Article one hundred and nine of the same Act as amended by Republic Act Numbered two hundred and forty-two, is hereby further amended to read as follows:

"ART. 109. *Soldiers—Separation from the service.*—No enlisted man, in the military service of the Philippines or in the Philippine Constabulary shall be discharged from said service without a certificate of discharge, signed by a field officer of the regiment or other organization to which the enlisted man belongs or by the commanding

officer when no such field officer is present, and no enlisted man shall be discharged from said service before his term of service has expired, except by order of the President, the Chief of Staff, the Chief of Constabulary, by sentence of a general court-martial or by sentence of bad-conduct discharge of a special court-martial."

SEC. 21. The words "a member of the nurse corps", or "members of the nurse corps" appearing in any article of Commonwealth Act Numbered Four hundred and eight, as amended except Article one as herein amended, shall be and are hereby deleted.

SEC. 22. Article forty-three of the same Act is hereby repealed.

SEC. 23. This Act shall take effect upon its approval.

Approved, June 14, 1950.

H. No. 1034

[REPUBLIC ACT NO. 517]

AN ACT GRANTING EDUARDO LOPEZ A TEMPORARY PERMIT TO CONSTRUCT, MAINTAIN AND OPERATE A COMMERCIAL RADIO BROADCASTING STATION IN THE PROVINCE OF ILOILO.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Subject to the provisions of the Constitution, as well as of Act No. 3846, entitled "An Act providing for the regulation of radio stations and radio communications in the Philippine Islands, and for other purposes", Act No. 3997, known as the Radio Broadcasting Law, Commonwealth Act No. 146, known as the Public Service Act, and their amendments, and other applicable laws, there is hereby granted to Eduardo Lopez, a temporary permit to construct, maintain and operate, for commercial purposes and in the public interest, a radio broadcasting station in the province of Iloilo: *Provided,* That this temporary permit shall be void unless the construction of the said station be begun within one and a half years from the approval of said temporary permit: *Provided, further,* That the grantee shall provide adequate public service time to enable the Government, through the station herein authorized, to reach the population, on important public issues; shall assist in the functions of public information and education; shall conform to the ethics of honest enterprise; and shall not use said station for the broadcasting of obscene or indecent language or speech, or for the dissemination of deliberately false information or willful misrepresentation, or to the detriment of the public health, or to incite, encourage or assist in subversive or treasonable acts.

SEC. 2. This temporary permit shall continue to be in force during the time that the Government has not established similar service at the places selected by the grantee.

SEC. 3. The grantee shall file a bond in the amount of ten thousand pesos to guaranty for the full compliance and fulfillment of the conditions under which this franchise is granted.

SEC. 4. In the event of any competing individual partnership or corporation receiving from the Congress

a similar temporary permit in which there shall be any term or terms more favorable than those herein granted or tending to place the herein grantee at any disadvantage, then such term or terms shall, *ipso facto,* become a part of the terms hereof and shall operate equally in favor of the grantee as in the case of said competing individual, partnership or corporation.

SEC. 5. In the event the Government should desire to maintain and operate for itself the radio broadcasting station herein authorized, the grantee shall turn over such station to the Government with all the serviceable equipment therein, at cost, less reasonable depreciation.

SEC. 6. This Act shall take effect upon its approval.

Approved, June 14, 1950.

H. No. 1036

[REPUBLIC ACT NO. 518]

AN ACT GRANTING THE MANILA BROADCASTING COMPANY A TEMPORARY PERMIT TO CONSTRUCT, MAINTAIN AND OPERATE RADIO BROADCASTING STATIONS IN THE PHILIPPINES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Subject to the provisions of the Constitution, as well as of Act Numbered Three thousand eight hundred and forty-six, entitled "An Act providing for the regulation of radio stations and radio communications in the Philippine Islands, and for other purposes"; Act Numbered Three thousand nine hundred and ninety-seven, known as the Radio Broadcasting Law; Commonwealth Act Numbered One hundred and forty-six, known as the Public Service Act, and their amendments, and other applicable laws, the Manila Broadcasting Company, is hereby granted, a temporary permit to construct, maintain and operate, for commercial purposes and in the public interest, radio broadcasting stations in the Philippines: *Provided,* That this temporary permit shall be void unless the construction of at least one radio broadcasting station be begun within one and a half years from the approval of said temporary permit: *Provided, further,* That the grantee shall provide adequate public service time to enable the Government, through the stations herein authorized, to reach the population on important public issues; shall assist in the functions of public information and education; shall conform to the ethics of honest enterprises; and shall not use said stations for the broadcasting of obscene or indecent language or speech, or for the dissemination of deliberately false information or wilful misrepresentation, or to the detriment of the public health, or to incite, encourage or assist in subversive or treasonable acts.

SEC. 2. The grantee shall file a bond in the amount of fifty thousand pesos to guaranty for the full compliance and fulfillment of the conditions under which this temporary permit is granted.

SEC. 3. In the event of any competing individual, partnership or corporation receiving from the Congress a similar temporary permit in which there shall be any term or

terms more favorable than those herein granted or tending to place the herein grantee at any disadvantage, then such term or terms shall, *ipso facto,* become a part of the terms hereof and shall operate equally in favor of the grantee as in the case of said competing individual, partnership or corporation.

SEC. 4. In the event the Government should desire to maintain and operate for itself any or all of the radio broadcasting stations herein authorized, the grantee shall turn over such station or stations to the Government with all the serviceable equipment therein, at cost, less reasonable depreciation.

SEC. 5. The grantee shall be liable to pay the same taxes on its real estate, buildings and personal property exclusive of the temporary permit, as other persons or corporations are now or hereafter may be required by law to pay.

SEC. 6. The grantee shall not require any previous censorship of any speech, play or other matter to be broadcast from its stations; but if any such speech, play or other matter should constitute a violation of the law or infringement of a private right, the grantee shall be free from liability, civil or criminal, for such speech, play or other matter: *Provided,* That the grantee, during any broadcast may cut off from the air the speech, play or other matter being broadcast if the tendency thereof is to propose and/or incite treason, rebellion or sedition, or the language used therein or the theme thereof is indecent or immoral.

SEC. 7. This Act shall take effect upon its approval.

Approved, June 14, 1950.

H. No. 1045

[REPUBLIC ACT NO. 519]

AN ACT GRANTING THE CEBU BROADCASTING COMPANY A TEMPORARY PERMIT TO CONSTRUCT, MAINTAIN AND OPERATE RADIO BROADCASTING STATIONS IN THE PHILIPPINES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Subject to the provisions of the Constitution, as well as of Act No. 3846, entitled "An Act providing for the regulation of radio stations and radio communications in the Philippine Islands, and for other purposes"; Act No. 3997, known as the Radio Broadcasting Law; Comomnwealth Act No. 146, known as the Public Service Act, and their amendments, and other applicable laws, the Cebu Broadcasting Company is hereby granted, a temporary permit to construct, maintain and operate, for commercial purposes and in the public interest, radio broadcasting stations in the Philippines: *Provided,* That this franchise shall be void unless the construction of at least one radio broadcasting station be begun within one and a half years from the approval of said temporary permit: *Provided, further,* That the grantee shall provide adequate public service time to enable the Government, through the stations herein authorized, to reach the population on important public issues; shall assist in the functions of public

information and education; shall conform to the ethics of honest enterprise; and shall not use said stations for the broadcasting of obscene or indecent language or speech, or for the dissemination of deliberately false information or willful misrepresentation, or to the detriment of the public health, or to incite, encourage or assist in subversive or treasonable acts.

SE. 2. The grantee shall file a bond in the amount of fifty thousand pesos to guaranty for the full compliance and fulfillment of the conditions under which this temporary permit is granted.

SEC. 3. In the event of any competing individual, partnership or corporation receiving from the Congress a similar temporary permit in which there shall be any term or terms more favorable than those herein granted or tending to place the herein grantee at any disadvantage, then such term or terms shall, *ipso facto,* become a part of the terms hereof and shall operate equally in favor of the grantee as in the case of said competing individual, partnership or corporation.

SEC. 4. In the event the Government should desire to maintain and operate for itself any or all of the radio broadcasting stations herein authorized, the grantee shall turn over such station or stations to the Government with all the serviceable equipment therein, at cost, less reasonable depreciation.

SEC. 5. The grantee shall be liable to pay the same taxes on its real estate, buildings and personal property, exclusive of the temporary permit, as other persons or corporations are now or hereafter may be required by law to pay.

SEC. 6. The grantee shall not require any previous censorship of any speech, play or other matter to be broadcast from its stations; but if any such speech, play or other matter should constitute a violation of the law or infringement of a private right, the grantee shall be free from any liability, civil or criminal, for such speech, play or other matter: *Provided,* That the grantee, during any broadcast may cut off from the air the speech, play or other matter being broadcast if the tendency thereof is to propose and/or incite treason, rebellion or sedition, or the language used therein or the theme thereof is indecent or immoral.

SEC. 7. This Act shall take effect upon its approval.

Approved, June 14, 1950.

H. No. 1067

[REPUBLIC ACT NO. 520]

AN ACT GRANTING THE PHILIPPINE BROADCASTING CORPORATION A TEMPORARY PERMIT TO CONSTRUCT, MAINTAIN AND OPERATE RADIO BROADCASTING STATIONS IN THE PHILIPPINES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Subject to the provisions of the Constitution, as well as of Act No. 3846, entitled "An Act providing for

the regulation of radio stations and radio communications in the Philippine Islands, and for other purposes"; Act No. 3997, known as the Radio Broadcasting Law; Commonwealth Act No. 146, known as the Public Service Act, and their amendments, and other applicable laws, the Philippine Broadcasting Corporation is hereby granted, a temporary permit to construct, maintain and operate, for commercial purposes and in the public interest, radio broadcasting stations in the Philippines: *Provided,* That this franchise shall be void unless the construction of at least one radio broadcasting station be begun within one and a half years from the approval of said temporary permit: *Provided, further,* That the grantee shall provide adequate public service time to enable the Government, through the stations herein authorized, to reach the population on important public issues; shall assist in the functions of public information and education; shall conform to the ethics of honest enterprise; and shall not use said stations for the broadcasting of obscene or indecent language or speech, or for the dissemination of deliberately false information or willful misrepresentation, or to the detriment of the public health, or to incite, encourage or assist in subversive or treasonable acts.

SEC. 2. The grantee shall file a bond in the amount of fifty thousand pesos to guaranty for the full compliance and fulfillment of the conditions under which this temporary permit is granted.

SEC. 3. In the event of any competing individual, partnership or corporation receiving from the Congress a similar temporary permit in which there shall be any term or terms more favorable than those herein granted or tending to place the herein grantee at any disadvantage, then such term or terms shall, *ipso facto,* become a part of the terms hereof and shall operate equally in favor of the grantee as in the case of said competing individual, partnership or corporation.

SEC. 4. In the event the Government should desire to maintain and operate for itself any or all of the radio broadcasting stations herein authorized, the grantee shall turn over such station or stations to the Government with all the serviceable equipment therein, at cost, less reasonable depreciation.

SEC. 5. The grantee shall be liable to pay the same taxes on its real estate, buildings and personal property, exclusive of the temporary permit, as other persons or corporations are now or hereafter may be required by law to pay.

SEC. 6. The grantee shall not require any previous censorship of any speech, play or other matter to be broadcast from its stations; but if any such speech, play or other matter should constitute a violation of the law or infringement of a private right, the grantee shall be free from any liability, civil or criminal, for such speech, play or other matter: *Provided,* That the grantee during any broadcast may cut off from the air the speech, play or other matter being broadcast if the tendency thereof is to propose and/or incite treason, rebellion or sedition, or the language used therein or the theme thereof is indecent or immoral.

SEC. 7. This Act shall take effect upon its approval.

Approved, June 14, 1950.

DEPARTMENT AND BUREAU ADMINISTRATIVE ORDERS AND REGULATIONS

DEPARTMENT OF THE INTERIOR

PROVINCIAL CIRCULAR (Unnumbered)

August 10, 1950

CONTROL OVER COLLECTION OF ALL KINDS OF SCRAP METALS (FERROUS AND NON-FERROUS) FOR N.D.C. PROJECTS.

To all Provincial Governors, City Mayors, and the Chief of Constabulary:

With reference to our Provincial Circulars (Unnumbered) dated October 21, 1948 and February 24, 1950, relative to the implementation of Executive Order No. 58 dated June 9, 1947, as amended by Executive Order No. 175, dated September 16, 1948, the cooperation and vigilance of all the local officials are requested in checking, controlling and stopping the gathering or collection of all kinds of scrap metals (ferrous and non-ferrous) without collection permit duly issued by the National Development Company, which has been designated the sole agency of the Republic of the Philippines charged with the duty of collection and disposing of all abandoned scrap metals. As you already know, scrap metals are needed by the Government for the Steel Mill Project and other heavy industries, such as the National Shipyards of the National Development Company.

It is requested that your report on the survey of all existing iron and steel scrap within your jurisdiction be reported to the National Shipyards of the N.D.C., Manila, if you have not already done so. It is urged that all violations in the illegal collection of all kinds of scrap metals be apprehended for prosecution if the facts of the case so warrant, and a report thereof sent direct to the National Development Company, through the Scrap Metal Office.

It is also requested that all the local officials specially the local police forces, be advised of the contents hereof for their information and guidance.

N. ROXAS
Undersecretary of the Interior

PROVINCIAL CIRCULAR (Unnumbered)

August 14, 1950

GOVERNMENT MANUAL AND GOVERNMENT OFFICIAL DIRECTORY

To all Provincial Governors and City Mayors:

Quoted hereunder are the pertinent portions of a memorandum dated July 25, 1950 of the Office of Public Information and received through the Office of the President, which are self-explanatory:

"The Government Manual will be ready for distribution in a few days. Like the Official Directory, the manual will be sold at cost in order that the Bureau of Printing may recover the amount from the revolving fund used for this purpose.

"Both the manual and the directory contain valuable information which, we believe, should be available to all key personnel of the Government.

"For this reason, I will appreciate your urging each department head to requisition enough copies of both the manual and the directory for their key personnel. In the case of the Department of Education, I believe that copies of both publications should be made available in all public school libraries.

"The Bureau of Printing is prepared to ship any number of copies requisitioned by each department.

"The price of the directory is ₱0.50 a copy plus ₱0.34 for postage. The manual costs ₱3 a copy for the paper cover edition and ₱4.50 for the cloth bound edition plus ₱0.50 for postage.

"Shipment in bulk will, of course, lessen the mailing cost. The orders may be made directly with the Director, Bureau of Printing, Port Area, Manila."

It is requested that all the local officials under your jurisdiction be advised also of the contents hereof for their information and guidance.

N. ROXAS
Undersecretary of the Interior

PROVINCIAL CIRCULAR (Unnumbered)

August 15, 1950

REPORT OF MEASURES TAKEN AGAINST GRAFT AND CORRUPTION IN THE GOVERNMENT

To all Provincial Governors and City Mayors:

Your attention is invited to the directive in a letter dated June 8, 1950 of the President of the Philippines, which was quoted in full in our unnumbered provincial circular dated June 10, 1950—Subject: Graft and Corruption, Measures Against. Since the 30-day period after receipt of our circular for the submission to this Office of a complete report of the action you have taken on this matter has long expired, and as only a few reports have so far been received from the provincial governors and city mayors, it is urged that you exert your

best efforts to have the desired reports submitted to this Office, at the earliest practicable date.

As called for in this directive, a preliminary report of this Office on the matter has been submitted to the President of the Philippines, to be supplemented by another report embodying whatever information and facts you will have submitted to this Office, hence the need for your early compliance with our request.

SOTERO BALUYUT
Secretary of the Interior

PROVINCIAL CIRCULAR
(Unnumbered)

August 29, 1950

PROVINCIAL GOVERNORS, CITY AND MUNICIPAL MAYORS URGED NOT TO LEAVE STATION

To all Provincial Governors and City Mayors:

In view of the unfortunate incidents which took place recently in Tarlac, Laguna and other places in Central and Southern Luzon in which dissidents entered the poblacion and caught the people unaware, all provincial governors, city and municipal mayors are hereby urged to stay in their respective official stations especially at night time. As Chief Executives in their respective provinces, cities and municipalities they should be at hand in time of emergency in order to reenforce the morale of the people and muster their available forces in time of need. There is no denying the fact that the spirit of the residents of any community to fight an enemy and face danger is highly bolstered by the presence of a leader who can command and direct action during such emergencies.

This serves therefore as a notice that unless absolutely necessary permission to leave station by Governors, City and Municipal Mayors will not be approved by this Department.

All municipal mayors should be advised hereof.

SOTERO BALUYUT
Secretary of the Interior

PROVINCIAL CIRCULAR
(Unnumbered)

July 22, 1950

APPROVAL OF THE PROVINCIAL BOARD ON CERTAIN APPOINTMENTS, REQUIRED

To all Provincial Governors and Provincial Boards:

In connection with appointments issued by Provincial Governors, attention is invited to the following provision of Republic Act No. 528 which took effect on June 16, 1950:

> "Provided, that appointments to all positions in the provincial service which under existing laws are in the unclassified civil service and of temporary employees in classified civil service positions made in the absence of eligibles, shall be submitted to the Provincial Board for approval."

To expedite the taking of dispositive action on all appointments extended by Provincial Governors which are received in this Department for approval, this Office shall assume in all cases that the provision of law quoted herein has been duly complied with and accordingly, appropriate action will be taken without the need of returning the appointments to the place of origin for verification as to whether said requirement of law has been complied with or not.

SOTERO BALUYUT
Secretary of the Interior

DEPARTMENT OF FINANCE

BUREAU OF INTERNAL REVENUE

REVENUE REGULATIONS NO. V–5

August 1, 1950

AMENDMENTS TO REVENUE REGULATIONS NO. V-2

To all Internal Revenue Officers and others concerned:

1. The interest of the revenue service so requiring, the Philippines is hereby divided into the following thirty-three inspection units each under the charge of a provincial revenue agent, with the exception of inspection units Nos. 31, 32 and 33 which are considered as special units under the supervision of a city revenue agent, a supervisor of distilleries and a supervisor of tobacco factories, respectively, to wit:

Inspection Unit No. 1—Comprising the Provinces of Ilocos Norte, Ilocos Sur and Abra, with Vigan, Ilocos Sur as the station town of the provincial revenue agent;

Inspection Unit No. 2—Comprising the Provinces of Cagayan and Batanes and the subprovince of Apayao, with Aparri, Cagayan, as the station town of the provincial revenue agent;

Inspection Unit No. 3—Comprising the Provinces of La Union and Mt. Province, including the subprovinces of Benguet, Bontoc, Ifugao and Kalinga and the City of Baguio, with Baguio City as the station town of the provincial revenue agent;

Inspection Unit No. 4—Comprising the Provinces of Isabela and Nueva Vizcaya, with Ilagan, Isabela as the station town of the provincial revenue agent;

Inspection Unit No. 5—Comprising the Province of Pangasinan and the City of Dagupan, with Dagupan City as the station town of the provincial revenue agent;

Inspection Unit No. 6—Comprising the Province of Tarlac, with Tarlac, Tarlac as the station town of the provincial revenue agent;

Inspection Unit No. 7—Comprising the Provinces Pampanga, Bataan and Zambales, with San Fernando, Pampanga as the station town of the provincial revenue agent;

Inspection Unit No. 8—Comprising the Province of Nueva Ecija and the City of Cabanatuan, with Cabanatuan City as the station town of the provincial revenue agent;

Inspection Unit No. 9—Comprising the Province of Bulacan, with Malolos, Bulacan as the station town of the provincial revenue agent;

Inspection Unit No. 10—Comprising the Provinces of Rizal and Cavite and the Cities of Tagaytay, Cavite, Quezon and Pasay, with Pasay City as the station town of the provincial revenue agent;

Inspection Unit No. 11—Comprising the Province of Laguna and the City of San Pablo, with San Pablo City as the station town of the provincial revenue agent;

Inspection Unit No. 12—Comprising the Provinces of Batangas and Mindoro and the City of Lipa, with Batangas, Batangas as the station town of the provincial revenue agent;

Inspection Unit No. 13—Comprising the Provinces of Quezon and Marinduque, with Lucena, Quezon as the station town of the provincial revenue agent;

Inspection Unit No. 14—Comprising the Province Camarines Norte, with Daet, Camarines Norte as the station town of the provincial revenue agent;

Inspection Unit No. 15—Comprising the Province of Camarines Sur and the City of Naga, with Naga City as the station town of the provincial revenue agent;

Inspection Unit No. 16—Comprising the provinces of Albay and Catanduanes and the City of Legaspi, with Legaspi City as the station town of the provincial revenue agent;

Inspection Unit No. 17—Comprising the provinces of Sorsogon and Masbate, with Sorsogon, Sorsogon as the station town of the provincial revenue agent;

Inspection Unit No. 18—Comprising the Provinces of Iloilo and Antique and the City of Iloilo, with Iloilo City as the station town of the provincial revenue agent;

Inspection Unit No. 20—Comprising the Province

Inspection Unit No. 19—Comprising the Provinces of Capiz and Romblon, with Capiz, Capiz as the station town of the provincial revenue agent;
of Occidental Negros and the City of Bacolod, with Bacolod City as the station town of the provincial revenue agent;

Inspection Unit No. 21—Comprising the Province of Oriental Negros and the sub-province of Siquijor and the City of Dumaguete, with Dumaguete City as the station town of the provincial revenue agent;

Inspection Unit No. 22—Comprising the Provinces of Cebu and Bohol and the City of Cebu, with Cebu City as the station town of the provincial revenue agent;

Inspection Unit No. 23—Comprising the Province of Leyte and the City of Ormoc, with Tacloban, Leyte as the station town of the provincial revenue agent;

Inspection Unit No. 24—Comprising the Province of Samar and the City of Calbayog, with Catbalogan, Samar as the station town of the provincial revenue agent;

Inspection Unit No. 25—Comprising the Provinces of Occidental Misamis and Lanao and the City of Ozamiz, with Ozamiz City as the station town of the provincial revenue agent;

Inspection Unit No. 26—Comprising the Provinces of Oriental Misamis and Bukidnon and the City of Cagayan de Oro, with Cagayan de Oro City as the station town of the provincial revenue agent;

Inspection Unit No. 27—Comprising the Provinces of Surigao and Agusan and the City of Butuan, with Surigao, Surigao as the station town of the provincial revenue agent;

Inspection Unit No. 28—Comprising the Provinces of Zamboanga and Sulu and the Cities of Zamboanga and Basilan, with Zamboanga City as the station town of the provincial revenue agent;

Inspection Unit No. 29—Comprising the Province of Cotabato, with Cotabato, Cotabato as the station town of the provincial revenue agent;

Inspection Unit No. 30—Comprising the Province of Davao and the City of Davao, with Davao City as the station town of the provincial revenue agent;

Inspection Unit No. 31—Comprising the Province of Palawan and the City of Manila, with Manila as the station town of the city revenue agent;

Inspection Unit No. 32—Comprising all places in the Provinces of Rizal, Cavite and Bulacan and the Cities of Manila, Pasay, Quezon, Tagaytay and Cavite where breweries, and distilling, rectifying, compounding and repacking establishments are located, with Manila as the station town of the supervisor of distilleries; and

Inspection Unit No. 33—Comprising all places in the Provinces of Rizal, Cavite and Bulacan and the Cities of Manila, Pasay, Quezon, Tagaytay and Cavite where cigar, cigarrette and tobacco factories are established, with Manila as the station town of the supervisor of tobacco factories.

These regulations, which amend Revenue Regulations No. V–2, shall take effect upon promulgation in the *Official Gazette*.

PIO PEDROSA
Secretary of Finance

Recommended by:

BIBIANO L. MEER
Collector of Internal Revenue

DEPARTMENT OF JUSTICE

ADMINISTARTIVE ORDER NO. 100

August 3, 1950

AUTHORIZING CADASTRAL JUDGE JOSE RODRIGUEZ TO HOLD COURT IN TACLOBAN, LEYTE

In the interest of the administration of justice and pursuant to the provisions of section 56 of Republic Act 296, the Honorable Jose Rodriguez, Cadastral Judge, is hereby authorized to hold court in Tacloban, Leyte, beginning August 7, 1950, for

the purpose of trying all kinds of cases and to enter final judgments therein.

For and in the absence of the Secretary of Justice:

JOSE P. BENGZON
Undersecretary of Justice

ADMINISTRATIVE ORDER NO. 101

August 4, 1950

DESIGNATING FIRST ASSISTANT CITY FISCAL OF THE CITY OF ILOILO SOFRONIO I. DUGUAY AS ACTING CITY FISCAL THEREOF.

In the interest of the public service and upon recommendation of the Solicitor General, Mr. Sofronio I. Daguay, First Assistant City Fiscal of the City of Iloilo, is hereby designated Acting City Fiscal of said City during the absence on leave of the City Fiscal thereof, effective August 7, 1950, and to continue only until the return of the latter to duty.

For and in the absence of the Secretary of Justice:

JOSE P. BENGZON
Undersecretary of Justice

ADMINISTRATIVE ORDER NO. 102

August 8, 1950

TEMPORARILY ASSIGNING ASSISTANT PROVINCIAL FISCAL OF SAMAR CELSO AVELINO TO TACLOBAN, LEYTE, TO DISCHARGE THE SAME DUTIES UNTIL FURTHER ORDERS.

In the interest of the public service and pursuant to the provisions of section 1680 of the Revised Administrative Code, Mr. Celso Avelino, Assistant Provincial Fiscal of Samar, is hereby temporarily assigned to Tacloban, Leyte, there to discharge the duties of an assistant provincial fiscal, effective immediately and until further orders.

For and in the absence of the Secretary of Justice:

JOSE P. BENGZON
Undersecretary of Justice

ADMINISTRATIVE ORDER NO. 103

August 12, 1950

AUTHORIZING JUDGE-AT-LARGE GABINO S. ABAYA TO DECIDE IN MANILA CERTAIN CIVIL CASES

In the interest of the administration of justice, the Honorable Gabino S. Abaya, Judge-at-Large, is hereby authorized to decide in Manila beginning August 14, 1950, civil case No. 5023, entitled "Baselisa Flor, plaintiff, *vs.* Victoriano Antonio, defendant" and civil case No. 5041 entitled "Hilarion Cruz, plaintiff, *vs.* Fernando F. de Villa Abrille, defendant" of the Court of First Instance of Tarlac.

For and in the absence of the Secretary of Justice:

JOSE P. BENGZON
Undersecretary of Justice

ADMINISTRATIVE ORDER NO. 104

August 16, 1950

AUTHORIZING JUDGE SEGUNDO MARTINEZ, THIRD JUDICIAL DISRICT, FOURTH BRANCH, TO DECIDE IN MANILA CERTAIN CASES.

In the interest of the administration of justice and upon request of Judge Segundo Martinez of the Third Judicial District, Fourth Branch, he is hereby authorized to decide and/or resolved in Manila, beginning August 16, 1950, the following cases which were previously tried by him while presiding over the Court of First Instance of Zambales:

Civil case No. 1219 entitled, Nicomedes Elejorde, et al., *vs.* Benguet Consolidated Mining Co. et al.;

Civil case No. 29 entitled, Sebastiana Rosales *vs.* Esperanza Battad;

Criminal case No. 3044 entitled, People *vs.* Angeles Barredo for homicide;

Criminal case No. 3011 entitled, People *vs.* Fausto de la Cruz and Filemon Manla;

Criminal case No. 3049 entitled, People *vs.* Olvidio Mansilla for malversation of public funds;

Civil case No. 1355 entitled, Zambales Central Institute, Inc. *vs.* Marcelino Rosete (Mandamus);

Civil case No. 1353 entitled, Victorio Abayan et al., *vs.* Artemio A. Marañon;

Criminal case No. 2971 entitled, People *vs.* Sabino Ditona et al.;

Special Proceeding No. 538 entitled, Guardianship of incompetent Juan Alinea;

Special Proceeding No. 550 entitled, Guardianship of Nardo Aranda et al.;

Civil case No. 1319, entitled, Isidoro Beltran et al., *vs.* The Municipal Treasurer etc.; and

Land Registration Case No. J–2, Victoria Mendoza, applicant.

For and in the absence of the Secretary of Justice:

JOSE P. BENGZON
Undersecretary of Justice

ADMINISTRATIVE ORDER NO. 105

August 22, 1950

AUTHORIZING JUDGE ZOILO HILARIO, SECOND JUDICIAL DISRICT, TO HEAR IN ILOCOS NORTE CERTAIN CRIMINAL CASE.

In the interest of the administration of justice, the Honorable Zoilo Hilario, Judge of the Second Judicial District, Ilocos Sur and Abra, is hereby authorized to hear in Ilocos Sur all motions and other incidental petitions for reconsideration for the new trial of Criminal case No. 70 of the Court of First Instance of Abra against Manuel Beronilla and others, whenever the interested parties so

agree; otherwise, the same should be heard in Abra.

For and in the absence of the Secretary of Justice:

JOSE P. BENGZON
Undersecretary of Justice

ADMINISTRATIVE ORDER No. 106

August 24, 1950

AUTHORIZING JUDGE-AT-LARGE VICENTE ARGUELLES TO HOLD COURT IN VIRAC, CATANDUANES

In the interest of the administration of justice, the Honorable Vicente Arguelles, Judge-at-Large, is hereby authorized to hold court in Virac, Catanduanes, beginning the first Tuesday of September, 1950, for the purpose of trying all kinds of cases and to enter final judgments therein.

For and in the absence of the Secretary of Justice:

JOSE P. BENGZON
Undersecretary of Justice

ADMINISTRATIVE ORDER No. 107

August 25, 1950

DESIGNATING PAMPANGA ASSISTANT PROVINCIAL FISCAL ARMANDO DYOCO TO ACT AS REGISTER OF DEEDS THEREOF.

In the interest of the public service, and pursuant to the provisions of section 201(*d*) of the Administratvie Code, as amended by Republic Act No. 164, Mr. Armando Dyoco, Assistant Provincial Fiscal of Pampanga, is hereby designated to act as Register of Deeds of same province, effective immediately, until a regular register of deeds is appointd.

JOSE P. BENGZON
Undersecretary of Justice

ADMINISTRATIVE ORDER No. 108

August 29, 1950

AUTHORIZING JUDGE EDILBERTO SORIANO, EIGHTH JUDICIAL DISTRICT, TO TRY CERTAIN CRIMINAL CASE.

In the interest of the administration of justice and upon suggestion of Judge Juan P. Enriquez of the Eight Judicial District, Batangas, Second Branch, the Honorable Edilberto Soriano, Judge of the Eighth Judicial District, Batangas, First Branch, is hereby authorized to try Criminal case No. 112 of the Court of First Instance of Batangas, Second Branch, entitled, "People of the Philippines *vs.* Maria Garcia et al." and to enter final judgment therein.

JOSE P. BENGZON
Undersecretary of Justice

ADMINISTRATIVE ORDER No. 109

August 31, 1950

AUTHORIZING CADASTRAL JUDGE JOSE C. ZULUETA TO HOLD COURT IN ILOCOS SUR

In the interest of the administration of justice and pursuant to the provisions of section 56 of Republic Act 296, the Honorable Jose C. Zulueta, Cadastral Judge, is hereby authorized to hold court in the province of Ilocos Sur beginning September 1, 1950 or as soon thereafter as practicable, for the purpose of trying all kinds of cases and to enter final judgments therein.

JOSE P. BENGZON
Undersecretary of Justice

DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES

BUREAU OF LANDS

CADASTRAL SURVEY ORDER No. 76

August 1, 1950

CADASTRAL PROJECT NO. 293, CADASTRAL SURVEY OF THE MUNICIPALITY OF SOLANA, PROVINCE OF CAGAYAN.

1. Pursuant to the provisions of section 1851 of the Administrative Code (Act No. 2711) notice is hereby given to all persons claiming interest therein, and to the general public, that on the 16th day of August, 1950 in the municipality of Solana, Province of Cagayan, a cadastral survey of all lands situated within the boundaries of the said municipality, will be begun by survey party No. 1-C.

2. In accordance with section 1853 of the said Code, the surveyors and other employees of the Bureau of Lands assigned to this survey party have full authority of law to enter upon the above-mentioned lands for the purpose of executing the survey and placing monuments thereon; and it is the duty of all persons claiming said lands or interests therein fully to inform the said surveyors and other employees concerning the boundaries of their respective lands claims.

3. Any person who shall willfully refuse to give such information, or shall in any manner interfere with the survey or the placing of monuments, or who shall deface, destroy or remove said monuments, or shall alter the location of same; or shall destroy or remove notices of survey posted upon the lands, shall be liable to prosecution under the provisions of section 2753 of the Administrative Code, as amended by Act No. 3077.

4. Private land surveyors are hereby requested to forward to the Bureau of Lands within sixty days from August 16, 1950, a list of the isolated surveys situated within the aforementioned cadastral project begun, and another list of contracts for isolated surveys entered into in good faith, by them prior to August 16, 1950. Isolated surveys not listed

as herein required will not be accepted for verification and approval.

5. Upon the completion of this cadastral survey, a petition for the settlement and adjudication of the titles to the lands include in the said survey in favor of all persons entitled thereto under the law will be filed by the Director of Lands in the Court of First Instance of Cagayan.

6. The effective cooperation of all land owners and others interested in the welfare of the community, is desired and requested. This cooperation may be expressed in the form of facilities given to the surveyors engaged in the work by furnishing all desired information concerning property boundaries, cutting lines, helping in transporting monuments, letting public buildings free of rent for offices of the cadastral survey party, and by providing such other means as may be found appropriate and feasible in each case. In this way the expenses for the survey will be reduced to the minimum, to the direct benefit of the inhabitants of Solana, Cagayan, as well as of the Government as under the law 70 per cent of the total cost of the cadastral survey and registration proceedings will be borne by the land owners within the municipality and the remaining 30 per cent by the Insular Provincial and Municipal Government concerned in equal shares.

JOSE P. DANS
Director of Lands

DEPARTMENT OF COMMERCE AND INDUSTRY

BUREAU OF COMMERCE

COMMERCE ADMINISTRATIVE ORDER NO. 11–1–E

July 24, 1950

AMENDING THE PROVISIONS OF SECTION 34 OF COMMERCE ADMINISTRATIVE ORDER NO. 11-1-C, AS AMENDED.

SECTION 1. Pursuant to the provisions of section 79 (B) of the Revised Administrative Code and section 10 of Act No. 3893 as amended by Republic Act No. 247, the provisions of section 34 of Commerce Administrative Order No. 11–1–C as amended, is hereby amended to read as follows:

"SEC. 34. Before a license is issued, a bonded warehouseman or mill owner and/or operator shall first pay to the Director of Commerce a license fee of Fifty Pesos (₱50) for the first one thousand (1,000) square meters or protected inclosure or one thousand (1,000) cubic meters of storage space or any fraction of such inclosure or space, and two and one half (2–1/2) centavos for each additional square meters or cubic meters.

Provided, however, that owners and/or operators of rice mills of the "kiskisan" type or any other types that accept palay for milling only, without keeping or storing the palay in the premises of the mill or *kiskisan*, shall pay the following schedule of license fees based on the milling capacity of the rice mill for 12 working hours, to wit:

1–50 sacks of palay	₱5.00
51–60 sacks of palay	10.00
61–70 sacks of palay	15.00
71–80 sacks of palay	20.00
81–90 sacks of palay	25.00
91–100 sacks of palay	30.00
101–110 sacks of palay	35.00
111–120 sacks of palay	40.00
121–130 sacks of palay	45.00
131–140 sacks of palay	50.00
141–150 sacks of palay	55.00
151–160 sacks of palay	60.00
161–170 sacks of palay	65.00
171–180 sacks of palay	70.00
181–190 sacks of palay	75.00
191–200 sacks of palay	80.00
above 200 sacks of palay	100.00

SEC. 2. This Commerce Administrative Order shall take effect on January 1, 1951.

Recommended by:

For and in the absence of the Director of Commerce:

BONIFACIO A. QUIAOIT
(*Chief, Division of Standards*)
Officer-in-Charge

Approved: July 28, 1950.

CORNELIO BALMACEDA
Secretary of Commerce and Industry

OPINIONS OF THE SECRETARY OF JUSTICE

OPINION NO. 81 (1950)

THE RIGHTS OF CLAIMANTS TO PROPERTIES SEIZED OR THE PROCEEDS ARISING FROM THE SALE THEREOF BY THE PHILIPPINE ALIEN PROPERTY ADMINISTRATOR, UNDER THE PROVISIONS OF THE TRADING WITH THE ENEMY ACT, DO NOT INCLUDE RELIEF FOR DAMAGES BY WAY OF RENTS, INTERESTS AND COSTS FOR THE DETENTION OF THE PROPERTY BY THE ADMINISTRATOR, IF THE PROPERTY SEIZED IS NON-INCOME PRODUCING OR IF THE PROPERTY WAS CONVERTED INTO MONEY WHICH WAS LEFT UNINVESTED.

2ND INDORSEMENT
August 8, 1950

Respectfully returned to the Honorable, the Executive Secretary, Manila, with the statement that the within opinion is rendered in accordance with the mandatory provisions of section 83 of the Revised Administrative Code which declares in part that "when thereunto requested in writing, the Secretary of Justice shall give advice, in the form of written opinions," to the President of the Philippines or the respective Heads of the Executive Departments.

The question presented in the basic papers is whether or not, under the provisions of the Trading with the Enemy Act, the rights of claimants to properties seized or the proceeds arising from the sale thereof by the Philippine Alien Property Administrator include relief for damages by way of rents, interests and costs for the detention of the property by the administrator, if the property seized is non-income producing or if the property was converted into money which was left uninvested.

The pertinent legal provision is found in section 9(*a*) of the Trading with the Enemy Act of October 6, 1917 (50 USCA, Appendix, sec. 9) which provides as follows:

> "SEC. 9. Claims to property transferred to custodian; notice of claim; filing; return of property; suits to recover. (*a*) Any person not an enemy or ally or enemy claiming any interest, right, or title in any money or other property which may have been conveyed, transferred, assigned, delivered or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, or to whom any debt may be owing from an enemy or ally of enemy whose property or any part thereof shall have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States may file with the said custodian a notice of his claim under oath and in such form and containing such particulars as the said custodian shall require; and the President, if application is made therefor by the claimant, may order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest therein to which the President shall determine said claimant is entitled: *Provided*, That

> no such order by the President shall bar any person from the prosecution of any suit at law or in equity against the claimant to establish any right, title, or interest which he may have in such money or other property. If the President shall not so order within sixty days after the filing of such application or if the claimant shall have filed the notice as above required and shall have filed the notice as above required and shall have made no application to the President, said claimant may institute a suit in equity in the Supreme Court of the District of Columbia or in the district court of the United States for the district in which such claimant resides, or, if a corporation, where it has its principal place of business (to which suit the Alien Property Custodian or the Treasurer of the United States, as the case may be, shall be made a party defendant), to establish the interest, right, title, or debt so claimed, and if so established the court shall order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States or the interest therein to which the court shall determine said claimant is entitled. If suit shall be so instituted, then such money or property shall be retained in the custody of the Alien Property Custodian, or in the Treasury of the United States, as proved in this Act, and until any final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied by payment or conveyance, transfer, assignment, or delivery by the defendant, or by the Alien Property Custodian, or Treasurer of the United States on order of the Court, or until final judgment or decree shall be entered against the claimant or suit otherwise terminated."

By this provision, it has been declared, Congress fully recognized the self-evident fact that mistakes would be made by the Alien Property Custodian in the administration of the said law and that property of innocent parties may be seized, and it was manifestly the intention of Congress to give the injured party a full and adequate remedy for the recovery of his property in all such cases (Vowinckel *vs.* Sutherland, 24 F2d, 196). In allowing the recovery of property illegally seized by the custodian, however, a claimant is limited to the rights granted to him by the statute and he may not insist on such rights as are not therein awarded. Thus, it has been held that interests on money illegally withheld and returned to the rightful owner may not be allowed (Camp *vs.* Miller, 300 Fed., 579). The reason for this rule is succinctly stated in Vowinckel *vs.* First Federal Trust Company, 15 F2d, 872, 874, thus:

> "Plaintiff is clearly entitled to a decree ordering the immediate return of his property, together with all accumulations thereon. Under the law he is not, however, entitled to payment of interest on any cash held in the treasury (Henkels *vs.* Miller [C.C.A. 2] 4 F. [2d] 988. 990; Kny. *vs.* Miller, 55 App. D. C. 95, 2 F [2d] 313, 314), or to costs. A suit of this nature is, in substance, one against the United States (Banco Mexicano *vs.* Deutsche Bank, 53 App. D.C. 266, 289 F. 924, 929; affirmed 263 U.S. 591, 602 44 S. Ct. 209, 68 L. Ed. 465), and against the United States, as has long been settled, no relief may be awarded, unless provided for by statute."

It is true that interests may be recovered when the money withheld or the proceeds of the property seized have been invested by the custodian. The liability for the payment of interest in such cases, however, is not a deviation from the rule that the government may not be sued for interest unless it consents to be liable therefor, because such interest is not the "interest" in the sense of the rule stated, but rather, "income" derived from the investment of the claimant's money. It is on this basis that interest on money or property invested by the Alien Property Custodian may be properly allowed (Henkels *vs.* Sutherland, 70 L. Ed. 953, 956).

The query is, therefore, answered in the negative.

For and in the absence of the Secretary of Justice:

JOSE P. BENGZON
Undersecretary of Justice

APPOINTMENTS AND DESIGNATIONS

BY THE PRESIDENT OF THE PHILIPPINES

Ad interim appointments and nominations confirmed by the Commission on Appointments:

DEPARTMENT OF FOREIGN AFFAIRS

August 10, 1950:

Benjamin T. Tirona, Consul of the Republic of the Philippines.

DEPARTMENT OF THE INTERIOR

Auguts 8, 1950:

Rodolfo D. Calo, Mayor, Sulpicio R. Lagnada, Vice-Mayor, and Concepcion C. Montilla, Raymundo Regis, Gil Villanueva, Alberto S. Llorente, Anastacio Esguerra, Silvino Javelosa, Leoncio Amante and Fortunato Rugay, Members of the Municipal Board of the City of Butuan.

Benigno M. Fajardo, Vice-Mayor, and Joaquin D. Alas, Rizalino Yazon, Federico Sardual, Saturnino Gadia, Luis de Guzman, Benjamin Tumangan, Jesus Mallari and Alejandro Quimzon, Jr., Members of the Municipal Board of the City of Cabanatuan.

Matilde Rizarri, Member of the Municipal Board of the City of Cebu.

Capt. Alejandro R. Bumanlag, Chief of Police of the City of Cabanatuan.

Major Miguel Capistrano, Chief of Police of the City of Baguio.

Bonifacio Capuyan, Chief of Police of Ormoc City.

Manuel Z. Roa, Chief of the Fire Department of the City of Cagayan de Oro.

August 10, 1950:

Hon. Marciano Roque, Member of the Board of Review for Moving Pictures for a term expiring February 16, 1953.

Milagros German, Member of the Board of Review for Moving Pictures, vice Flora A. Ylagan, for an unexpired term ending February 16, 1951.

Hon. Carlos Rivilla, Mayor, and Pablo Cuneta, Vice-Mayor of Rizal City.

Crispin Labaria, Member of the Provincial Board of Misamis Occidental.

Juan Quijano, Member of the Provincial Board of Ilocos Sur.

Espiridion Mondragon, Member of the City Council of the City of Basilan.

Lt. Col. Celestino C. Juan, Deputy Chief of Police of the City of Manila.

Major Eugenio C. Torres, Chief of Detectives of the City of Manila.

Pedro Nuñez, Chief of Police of the City of Iligan.

Manuel Jariol, Chief of Fire Department of the City of Iligan.

August 23, 1950:

Hon. Serapio J. Datoc, Provincial Governor of Zamboanga.

Lamberto Macias, Member of the Provincial Board of Negros Oriental.

Marcelo Bandalan, Vice-Mayor, and Profirio Ayoyao, Member of the Municipal Board of the City of Ormoc.

August 24, 1950:

Felipe Pacana, designated Acting Member of the Municipal Board of the City of Cebu, August 16, 1950.

Hon. Bato Ali, Mayor, Mangorangka Mao, Vice-Mayor, and Pango Tomawis, Mama Minor and Olo Bakarat, Members of the City Council of the City of Dansalan, August 29, 1950.

Mamitua Saher, City Secretary of the City of Dansalan, August 29, 1950.

Capt. Mama Magompara, Acting Chief of Police of the City of Dansalan, August 29, 1950.

DEPARTMENT OF FINANCE

August 8, 1950:

Quirico Battad, City Treasurer of the City of Butuan.

Jose Quirolgico, City Treasurer of Cagayan de Oro.

Miguel Jardiel, City Treasurer of the City of Cabanatuan.

August 10, 1950:

Gregorio Pareja, Chairman of the Board of Tax Appeals of Abra.

Catalino Guillermo, Member of the Board of Tax Appeals of Bulacan.

Aguedo V. Gepte, Chairman of the Board of Tax Appeals of Cotabato.

Angel Paguia, Chairman of the Board of Tax Appeals of Negros Occidental.

Martin Doroteo, Member of the Board of Tax Appeals of Rizal.

Alipio Alda, Chairman of the Board of Tax Appeals of Zamboanga.

Ceferino Lorena, Chairman, and Rafael Triumfante, Antonio Atutubo, Agapito Lorete and Soledad L. Oropeza, Members of the Board of Tax Appeals of the City of Legaspi.

August 24, 1950:

Lamberto Abuton and Francisco Alfajardo, Members of the Board of Tax Appeals of Misamis Occidental, August 29, 1950.

DEPARTMENT OF JUSTICE

August 8, 1950:

Teodolo R. Ricaforte, Municipal Judge of the City of Butuan.

Gregorio Cadhit, Municipal Judge of the City of Cabanatuan.

Leon Aquino, City Attorney of the City of Cabanatuan.

Francisco Consolacion, Justice of the Peace of Panabo, Davao; Fulgencio Palacios of San Dionisio and Concepcion, Iloilo; Luis A. Go of Villareal and Talalora, Samar; Alejandro Sison of Motiong and Jiabong, Samar; Pacifico P. Tolentino of Laur, Nueva Ecija; and Azarias M. Padilla of Bitulok, Nueva Ecija.

August 10, 1950:

Januario Lagrosas, Municipal Judge of the City of Iligan.

Agustin V. Antillon, Municipal Judge of the City of Cagayan de Oro.

Delfin Cruz, Assistant Provincial Fiscal of the Province of Bulacan.

Aquilino E. Pimentel, City Attorney of the City of Cagayan de Oro.

Jose R. Villanueva, City Attorney of the City of Butuan.

Francisco B. Alfajardo, Register of Deeds of Occidental Misamis.

Godofredo M. Briones, Justice of the Peace of Pedro Garcia, Batangas; Dominador Tumulak of Balamban, Cebu; Gerardo Bello of San Esteban, Ilocos Sur; Francisco Puray of Bontoc, Leyte; Rodolfo Azanza of Mandaon and Balud, Masbate; Arsenio Alicio of Cataingan, Masbate; Benigno Caiobes of Santa Cruz, Mindoro; Lucio Parco of Zamboanguita and Siaton, Oriental Negros; Amado B. Guico of Sto. Tomas, Pangasinan; Sofronio N. Chacon of Quezon, Quezon; Cucufate Baquilod of Llorente, Samar; Juan Abing of Giporlos, Samar; and Froilan Tolentino of Parang and Indanan, Sulu.

Filemon M. Odiamar, Register of Deeds of Camarines Sur.

August 23, 1950:

Hon. Felix Martinez and Hon. Felipe Natividad, Associate Justices of the Court of Appeals.

Hon. Rodolfo Baltazar, Judge of the Third Judicial District, Pangasinan, Branch III.

Hon. Hermogenes Caluag, Judge of the Seventh Judicial District, Rizal, Branch II.

Hon. Antonio G. Lucero, Judge of the Seventh Judicial District, Cavite and Palawan, Branch II.

Mariano Bernarte, Assistant Provincial Fiscal of Tarlac.

Amado Gador, Assistant Provincial Fiscal of Occidental Misamis.

Simplicio A. Buyco, Register of Deeds of the province of Zamboanga.

Precioso Cordoves, Justice of the Peace of Maluko, Malitbog and Libona, Bukidnon; German Villagera of Libmanan, Camarines Sur; Jose Magallanes of Ibajay, Capiz; Saturnino Solidum of Nabas, Capiz; Pedro San Roque of Caramoran, Catanduanes; Jose B. Nambayan of Carmona, Cavite; Jose A. de Leon of Pagalungan, Cotabato; Vicente Fontañosa of Pikit, Cotabato; Julian Salcedo of Nuling, Cotabato; Alfredo C. Florendo of Calimuyod, Ilocos Sur; Antonio Ayaay of MacArthur, Leyte; Panfilo Tabudlong of Cananga, Leyte; Alejandro Ecarma of Naval, Almeria and Kawayan, Leyte; Gregorio Angustia of Milagros and Mobo, Masbate; Arturo M. Arnau of Dimasalang and Uson, Masbate; Jose Suelto of Pamplona, Negros Oriental; Mario F. Clutario of Romblon, Romblon; Sixto Rabino San Fernando, Cajidiocan and Magdiwang, Romblon; Marcelo T. Mangahas of South Ubian and Tandubas, Sulu; Otilio Abaya of Bislig and Liñgig, Surigao; Victor Arichea of Olongapo, Zambalas; and Jose B. Spuriada of Margosatubig and Dimataling, Zamboanga.

Hilario Bullecer, Register of Deeds of Nueva Vizcaya.

August 24, 1950:

Hon. Fidel Ibañez, Judge of the Sixth Judicial District, Manila, Branch IX.

Hon. Simeon Ramos, Judge of the Sixth Judicial District, Manila Branch I.

Hon. Juan R. Liwag, Judge of the Tenth Judicial District, Albay and Catanduanes, Branch I.

Hon. Manuel M. Mejia, Judge-at-Large.

DEPARTMENT OF PUBLIC WORKS AND COMMUNICATIONS

August 8, 1950:

Vicente Salazar, Jr., City Engineer of the City of Cabanatuan.

August 10, 1950:

Benedicto Perez, City Engineer of the City of Butuan; Gil Lerias, City Engineer of the City of Cagayan de Oro; Fortunato Koppin, City Engineer of the City of Iligan; and Felix Codilla, City Engineer of the City of Naga.

August 23, 1950:

Fernando Montez, City Engineer of the City of Ormoc.

DEPARTMENT OF EDUCATION

August 8, 1950:

Pablo P. Reyes, City Superintendent of Schools for Quezon City.

August 10, 1950:

Macario Naval, President of the Philippine Normal College.

DEPARTMENT OF LABOR

August 23, 1950:

Primo G. Maliuanag, Commissioner of Industrial Safety.

DEPARTMENT OF NATIONAL DEFENSE

August 10, 1950:

Col. Juan A. Benitez, Chairman of the Philippine Veterans Board.

DEPARTMENT OF HEALTH

August 10, 1950:

Benjamin Zapanta, City Health Officer of the City of Butuan.

Dr. Tranquilino E. Elicaño, Chairman, and Dr. Nicanor B. Padilla and Dr. Conrado E. Lorenzo, Members of the Boar dof Medical Examiners.

DEPARTMENT OF ECONOMIC COORDINATION

August 23, 1950:

Hon. Prospero Sanidad, Chairman of the Board of Directors of the National Airports Corporation for a term expiring August 6, 1953.

Hon. Celilio Putong, Member of the Government Service Insurance Board for a term expiring December 3, 1950.

Jose M. Reyes, Member of the Board of Directors of the Philippine Charity Sweepstakes Office for a term expiring May 31, 1951.

CIVIL SERVICE BOARD OF APPEALS

August 10, 1950:

Hon. Teodoro Evangelista and Hon. Pio Joven, Members of the Civil Service Board of Appeals.

GOVERNMENT SERVICE INSURANCE BOARD

Casimiro L. Dacanay, Member of the Government Service Insurance Board for a term ending December 3, 1952.

NATIONAL URBAN PLANNING COMMISSION

Miguel Y. Garcia, Director of the National Urban Planning Commission.

PRICE ADMINISTRATION BOARD

Julia Vda. de Gonzales and Pedro Fernandez, Members of the Price Administration Board.

BOARD OF EXAMINERS FOR MINING ENGINEERS

Manuel M. Aycardo, Jr., Chairman, and Leopoldo F. Abad and Jones R. Castro, Members of the Board of Examiners for Mining Engineers.

PENSION COMMISSION

August 23, 1950:

Ruperto S. Cristobal and Federico Agrava, Members of the Pension Commission.

IMPORT CONTROL

Guillermo Gomez, Commisioner, and Helen Benitez, Alfonso Calalang and Aurelio Periquet, Members of the Import Control Board.

PRICE ADMINISTRATION BOARD

August 24, 1950:

Hon. Cornelio Balmaceda, Chairman, and Ramon Araneta, Member of the Price Administration Board, August 26, 1950.

IMPORT CONTROL BOARD

Benigno Zialcita, Jr., Member of the Import Control Board, vice Alfonso Calalang, August 28, 1950.

Appointments and designations:

Lt. Col. Victor H. Dizon, Acting Deputy Administrator of the Civil Aeoronautics Administration, August 14, 1950.

Marciano S. Angeles, Chairman, and Teodoro T. Bacani and Celso L. Preclaro, Members of the Board of Mechanical Engineering Examiners, August 28, 1950.

MUNICIPAL OFFICIALS

Silverio Masas, Councilor of Balamban, Cebu, August 22, 1950.

Ponciano Vicente, Mayor, Teofilo Verdad, Vice-Mayor, and Vicente Ubalde, Dioscoro Pascua, Filomeno Martinez and Evaristo Evangelista, Councilors of Bagamanoc, Catanduanes, August 3, 1950.

Castor Mola, Councilor of Nueva Valencia, Iloilo, August 2, 1950.

Timoteo Cagunggun, Councilor of Cabagan, Isabela, August 2, 1950.

Basilio P. Picio, Councilor of Aurora, Isabela, August 2, 1950.

Jesus Olmedo, Mayor, Juan Fernandez, Vice-Mayor, and Juan T. Jervoso, Epifanio Verzosa, Alipio Moquia and Marcelo Margate, Councilors of Mac-Arthur, Leyte, August 2, 1950.

Ricardo Omapas, Councilor of Inopacan, Leyte, August 18, 1950.

Isaac Garciano, Councilor of Isabel, Leyte, August 22, 1950.

Ladislao Aquino, Andres Maniquiz, and Alfredo Gallardo, Councilors of Laur, Nueva Ecija, August 2, 1950.

Adriano Custodio, Mayor, Manuel Edonga, Vice-Mayor, and Gil Bacaltos, Ladislao Macanas, Delfin Albog and Juan Bayos, Councilors of Busuanga, Palawan, August 17, 1950.

HISTORICAL PAPERS AND DOCUMENTS

Message of His Excellency, President Elpidio Quirino, at the opening of the Special Session of the Second Congress held at the Session Hall of the Legislative Building, August 1, 1950:

Mr. President, Mr. Speaker,
Gentlemen of the Congress:

I have called this special session and decided to appear before you in person in order to deliver a message of great urgency. The incomplete solution in your last regular session of our immediate financial and other internal problems and the necessity to comply at this moment with our external obligations require the adoption of decisive measures.

This session coincides with a period of mounting menace in our neighborhood which has created a situation involving the rest of the world, a situation which will undoubtedly impinge upon your deliberations. You are called upon to act on two imperatives: the creation of indispensable sources of revenue to finance our budgetary requirements and the necessary preparation for the defense of our national integrity and compliance with our international commitments.

In my message of February 7th last, I recommended a more reduced appropriation law in comparison to that of last year, and warned against unplanned spending, but at the same time recommending the approval of tax measures which I calculated to be sufficient to offset any deficiency in our financial resources. I am happy to find that the Congress has carried out the policy of reducing our expenditures, thus making further reductions by 12 million pesos in the budgetary proposal for the fiscal year 1950–1951.

These reductions, however, have affected not a few of the essential services we have established, aggravated by the non-approval of the tax measures I submitted in your last session. It is now necessary to make provision for an additional income of at least 130 million pesos. It is my conviction that we can realize this additional income by positive and courageous action on the revenue bills that have been processed, and upon which hearings have been held, by the Joint Legislative Committee created by the Council of State. Passage of these measures will raise the tax burden from six *per centum* of the national income to eight *per centum*. But this is not as onerous a tax burden as those of other countries of comparative productive capacity and *per capita* earning power, which sustain tax burdens of 20 to 37 *per centum* of their national incomes.

We need the 130 million pesos principally to provide additional appropriation for public education, and for the Armed Forces, for civilian emergency work, and to cover deficiencies in the appropriations of executive departments whose present limitations will result in the paralyzation of certain of their essential functions. In lieu of the usual annual appropriation for public works, I would like to ask you to consider if the funds derived from fuel oils and motor vehicles might not be made adequate to finance the construction and maintenance of the essential public works which I calculate we would be able to collect between 60 and 70 million pesos at the present rate of taxation, so that receipts of the General Fund might no longer be drawn upon for these purposes, at least temporarily.

Specifically, I urge the approval of these measures together with the revenue bills already processed by the Joint Committee, convinced that they will immeasurably assist in the solution of our immediate fiscal problems. For purposes of brevity, I shall merely describe for the moment the list of these bills that I am recommending with this message, consisting of two tariff measures and eight bills amending the Internal Revenue Code, and other measures to provide permanent sources for additional support of elementary education.

1. An act to legalize and ratify the license and other fees and royalties collected or to be collected by the Sugar Quota Office.

2. An act to provide that internal revenue stamps of the Philippines may in certain cases be affixed in foreign countries to tobacco products manufactured in such countries before importation into the Philippines.

3. An act to raise revenue by raising from two to five pesos the charge for the certificate of transfer of large cattle.

4. An act to amend section eight of paragraph twenty-two of the Philippine Tariff Act of 1909 which is continued in force by Republic Act Numbered Three.

5. An act to amend section twenty-one of the Philippine Tariff Act of 1909 which is continued in force by Republic Act Numbered Three. (Re refund of amount equal to tariff duties imposed on fuel used by vessels engaged in foreign or local trade.)

6. An act to amend certain sections of Commonwealth Act Numbered Four hundred sixty-six, otherwise known as the National Internal Revenue Code. (Re tax upon business, sales tax, etc.)

7. An act to amend Title VI of Commonwealth Act Numbered Four hundred and sixty-six, otherwise known as the National Internal Revenue Code. (Re documentary stamp tax.)

8. An act to amend sections one hundred and thirty-three, one hundred and thirty-four, one hundred and thirty-five, one hundred and thirty-seven, one hundred and forty, and one hundred and forty-seven of Commonwealth Act Numbered Four hundred and sixty-six, otherwise known as the National Internal Revenue Code, as amended. (Re tax on distilled spirits, wines, liquors, etc.)

9. An act to amend section six of Act Numbered Forty-one hundred and thirty, as amended. (Re increase of documentary stamp tax for sweepstake tickets.)

10. An act to amend sections two hundred and ninety-six and two hundred and ninety-seven of Commonwealth Act Numbered Four hundred and sixty-six, otherwise known as the National Internal Revenue Code. (Registration of radio receiving sets.)

11. An act to amend sections two hundred and sixty and two hundred sixty-one of Commonwealth Act Numbered Four hundred and sixty-six, otherwise known as the National Internal Revenue Code. (Re amusement tax.)

12. An act to amend section two hundred and fifty-eight of Commonwealth Act Numbered Four hundred and sixty-six, otherwise known as the National Internal Revenue Code.

13. An act fixing a fee for the consular certification of invoices.

14. An act to amend certain sections of Commonwealth Act Numbered Four hundred and sixty-six, as amended, otherwise known as the National Internal Revenue Code, and to add Title II thereof a supplement providing for the withholding of the income tax on wages, and for other purposes.

15. An act to amend sections eighty-five, eighty-six, eighty-nine, one hundred and nine, and one hundred and ten of Commonwealth Act Numbered Four hundred and sixty-six, otherwise known as the National Internal Revenue Code, as amended. (Re estate, inheritance, and gift taxes.)

16. Measures to provide permanent sources for additional support of public elementary education—

a. Imposing a tax on bachelors, widows, widowers, the proceeds of which shall accrue to a permanent fund to be used exclusively for the operation and maintenance of public elementary schools.

b. Levying a tax of 10 per cent on total bets in races and jai-alai, allotting proceeds as in letter *a* above.

c. Authorizing municipalities to charge tuition fees in intermediate classes.

d. Imposing a tax of one per cent on the value of imports based on consular invoices.

e. Levying a fee of ₱10 for every high school diploma issued by public and private high schools and a fee of ₱20 for collegiate or university diploma from public and private universities and colleges.

There are a few other measures of administrative character the urgency of action on which I shall certify to the Congress in each specific case. I assure you, however, that I shall not overburden the Congress unnecessarily except by measures of the most peremptory character. But we must continue strengthening the national economy, and having in view our external finance. We cannot forever be imposing negative measures, such as import, exchange, and credit controls to tide us over to better times.

Taking advantage of the enlightened policy of assistance to less developed countries which the President of the United States had adopted, I have therefore asked for an exhaustive study and analysis of our economic difficulties. We have with us today a most distinguished group of top level economists, financiers, and agricultural and industrial experts undertaking this work. We hope that finally a program of mutual cooperation can be devised between our Government and the Government of the United States for the stabilization of our economy. A Philippine economically stable is an indispensable factor in the preservation of democracy and the safe-guarding of the freedom and liberty that we enjoy together with our neighbors.

Now I wish to draw your attention to the precarious international situation. As the recognized leader of the free world, the United States of America has been called upon to bear the brunt of the United Nations' effort to restore security and order in Korea. That great Republic, heeding the clamor of her peace-loving people to disarm and demobilize at the end of the last war, completely withdrew its troops from Korea and maintained only a small force in Japan for routine duties of occupation. Yet when the challenge came from the North, she met that challenge without vacillation realizing that the future of the United Nations and the fate of the free world were at stake. America, having committed herself to the maintenance of international peace and security under the United Nations charter and having pledged herself to defend freedom as a matter of basic national policy, stood up to honor her commitments to the letter. America has met the issue squarely and it is a good thing for the free people of the rest of the world, for Asia especially, to see and for the Philippines to know.

As a member of the United Nations we share fully in these commitments. But these commitments are clearly defined and fixed more strongly still by the existing bonds of friendship between the United States and the Philippines—bonds which, though requiring no formal instruments to maintain, are set forth in two treaties between them: the agreement concerning military bases and the agreement concerning military assistance to the Philippines. The basic assumption in both agreements is that the Governments of the two countries realize the need for taking the necessary measures to promote their mutual security and to defend their territories and areas, placing their forces and resources under the United Nations to help maintain world peace, especially in the Pacific. These principles become operative to the extent that the security of this country and the requirements of our mutual defense with the United States may become directly involved in further developments of the Korean situation.

The Philippine Government has pledged its support of the United Nations' effort in Korea to the limit of its available resources. We have promised to send materials and equipment, part of which is already there, and we have offered to enlist Filipino volunteers to fight under the United Nations flag in Korea.

Our country has barely risen as you know, from the ruins of the last war. Our friends and allies under the United Nations charter will understand that a country like ours, itself badly in need of military assistance and its available troops actually engaged in putting down political dissidents at home, has not the resources to undertake overseas a complete and self-contained military effort of its own. Nevertheless, we shall make sacrifices, for fight we must if fight we need. Thus, we prepare for the next war, while we repair the damages of the last one. We are not going to dodge our responsibility nor renounce the honor to fight side by side with the rest of the world in this world conflict. [*Applause.*]

Our friends understand also that the effort which the Philippine Government continues to exert with undiminished vigor to fight the dissidents within is an integral part of the overall struggle against the totalitarian enemy. The same considerations that have compelled the countries of Western Europe and elsewhere, which are directly exposed to possible enemy action, to avoid the dissipation of their defensive powers, hold with respect to the Philippines. The global strategy for the defense of the free world requires that we leave no exposed areas undefended or unguarded lest the concentration of our forces at a single point place us at the mercy of the enemy who

enjoys the advantage of choosing the time and the place for the next engagement.

Gentlemen of the Congress, I need not warn you how close we are to the center of the intensity of the present armed encounter. God grant that the clash of arms in the area may be localized, confined to that unfortunate peninsula in Asia, and that our country may escape direct involvement. The risk is great we all realize but it is a risk which we have to take as a free people and as a faithful member of the United Nations. Since the situation is extremely fluid and the menace mounts from hour to hour, I must strongly urge a policy and a program sufficiently ample and flexible to meet the emergency.

I am asking you, first of all, to vote more funds for national defense and internal security. That is not only elemental but fundamental to a country as weak as we are. I realize that the condition of our finances renders this request extremely difficult to satisfy. But this we must do even if other public services will have to be curtailed thereby. We rebel against this unpleasant duty but the need is compelling and our national survival demands it. To do less would be a dereliction of duty and a treasonable betrayal of public trust. We cannot afford, you and I, we of the present generation—to renounce our responsibility to make this country continue existing with the independence and sovereignty that we now enjoy.

Democracy is a complicated machine and its operation can sometimes be awkward and slow but it is an uplifting experience to see it roll into action and come to grips with reality and danger. Then like an advancing gigantic tank nothing will equal its power and tenacity.

This special session of Congress therefore, I am confident, will see Philippine democracy going into action, in high gear, in a time of immeasurable danger that we now face. I bespeak the hopes of our people when I say that this Congress, setting narrow partisanship aside and unmindful of individual political fortunes, will set a new precedent in single-minded devotion to the welfare, freedom, and security of the nation.

The internal and external situation of the country today has again challenged our courage, our vision, our moral fiber, our determination. The circumstances demand that we act as one man, looking forward only to the permanent interests of the country and our contribution to the preservation of freedom and peace of mankind.

I have addressed innumerable appeals for national unity to you and to our people. I consider it unnecessary to make this appeal anew at this moment. If unity has been desirable heretofore, it now acquires the quality of a cate-

gorical imperative. We must come together in faith, and in action, placing our shoulders together to the wheel—for freedom, for survival. Thank you.

Statement of President Quirino on the Sixth Anniversary of the death of President Manuel L. Quezon, August 1, 1950:

The Philippines was under enemy occupation when President Quezon died six years ago today. Yet at that time there was not a doubt among his people that the country would soon gain its freedom. He passed away as Moses did, after a lifetime of devoted leadership of his people, catching a glimpse of their Promised Land but not actually entering it. In the emergency that his country, in freedom, is facing today, we can demonstrate no greater loyalty to the memory of his work than mustering all the courage and wisdom and material resources we can to preserve and develop the fruit of that work for the benefit of our posterity.

Twenty-second monthly radio chat of His Excellency, President Elpidio Quirino, beamed to the Filipino people from Malacañan Palace on August 15, 1950:

My dear Fellow Countrymen:

I invite you to listen to me carefully. But don't be alarmed because I am not going to talk big. As a matter of fact, talking big is now becoming an ailment of our country. Observe the daily remarks or observations printed in the papers or heard in street corners, restaurants, cafes and even in night clubs, as well as in important offices of the government and outside of the government. The people are becoming jittery over the effects upon the whole life of the nation of remarks and reports so disproportionate to the reality of the situation which they encompass. Listen to them say, for instance, that if graft and corruption are not curbed, this government will be penniless by September 15th or will collapse not later than December 31st of this year; or that if a certain official of the government is not removed there will be no appropriation to protect the civilian population in an emergency; or that if another official's resignation is not accepted immediately, there will be no cooperation between two important departments of the government; or that if the President is not removed by impeachment, United States assistance would not be given to us. All this reminds me of the story of how the "lechon" originated in China. A house was accidentally set on fire and the owner discovered that

the pig underneath was roasted. He convinced his friends that this was good to eat and concluded that the best way to prepare a "lechon" was to set fire to a house with a pig underneath. Inversely, some of our people believe that if there is a "lechon," a house must have been set on fire. Thus if one public official has become rich while in office, the whole government must have gone wrong or that if the President is removed "there will be a new set of officials who, it is easy to see" will solve our problems. It is a fantastic development, but this is the situation which some people are creating in the face of our present difficulties.

Before our mental health is seriously affected, it is necessary that we have a vacation from this strange mental attitude and take things more calmly as normal human beings would. We are taxing our intelligence too much in running into far-fetched conclusions regarding routine problems of the workaday world.

One famous scientist who visited our country as a specialist in mental health science, made the observation that our mental health in the Philippines is rated higher than that of the general European population and many other progressive countries of the world, for several reasons. Some of them are: our individual life is simple; our family life is stable; we are not as yet highly industrialized and our atmosphere is not surcharged with keen competition in the struggle for existence; our people, unlike other peoples, have not as yet been exposed to intermittent and frequent wars and do not easily get panicky at any threat of war. Certainly there is need of preserving our mental health during these days when everybody talks of a financial debacle, of the Korean war, of the Third World War, and of all the one thousand and one evils which many of us take pride in magnifying even after elections.

It appears that those who place so much store by our rights to free expression are the first to be frightened by the consequences of their license to ventilate our shortcomings. We cannot hear of, or mouth, the existence of ills in our government and society without generating panic among ourselves and our neighbors. We forget that ills are discovered and diagnosed and discussed to find the means to eliminate them and not for ourselves to be scared into paralysis, despair and death.

We should realize that there is nothing particularly cheap or easy about being independent. We did not come by our freedom cheaply, we all know that. Well, we must know that it will cost us more to stay free in brain and

brawn energy, in blood and in treasure. Whoever believes that the establishment of freedom resolves all problems and responsibilities, deceives himself. As well said by Gen. Douglas MacArthur, there is now no security in this world, there is only opportunity.

But I am sure we can solve our problems, big as they are and complicated as they appear, with more calm and composure. It can be a virtue to occupy ourselves about the difficulties of our neighbors. It is a civic duty to help solve the big national problems. It is a noble gesture to stand ready to fight for other peoples' right to be free and independent. It is an inescapable obligation on our part to act collectively in the preservation of our own individual and national rights. We cannot be so selfish as to our own interests and happiness alone, denying others who knock at our door the help that we can well extend to insure their rights and happiness. But it is a good thing not to lose our sense of proportion in estimating our ability to comply with our social, civic, and patriotic obligation.

We must begin at home and discover for ourselves the realities of a home life. While we express or show sympathy for others' sufferings, we do not have to parade as the sole champions of the downtrodden's cause and cry loud to the sky in denunciation of the incapacity of the government to satisfy the poor people's demands, socially malingering as if we too were oppressed, depressed, miserable or starving when we are not. For more often than not many of those who so champion their cause are well-fed, well-housed and wealthy, or have become wealthy.

We have men of ample means in our midst who are quick to seize every chance to identify themselves as champions of the underprivileged. This they do by criticizing at every opportunity what the government is doing or is not doing. I like to see these men graduate from the purely pious fingering of their political scapularies as a means of protecting their property from violence and come down to practical projects to help elevate the object of their sympathy. Then we can sample the sincerity of their social awareness and get the inspiration we have long needed. While echoing and re-echoing what other peoples are suffering, we can take positive action in helping others to secure their normal needs, or if possible, share with them what we have to help satisfy their needs. This will have a more effective way of encouraging our fellows to stand on their own feet rather than to pull down others who are also laboring to help. Unless we are convinced that we have the monopoly of sympathy, of Christian

feeling, of clearness of vision and a determination to help others, this sitting in judgment of others' conduct is a practice which has retarded our movement forward more than anything else.

If we needed national and individual discipline of a high order with which to close and strengthen our ranks in our past struggles to be prosperous and free, we need greater discipline now with which to marshal our forces in order to stay free. This discipline is not the kind imposed by a dictatorship. It must come from every individual's sense of responsibility and duty whatever his assignment in relation to his neighbors and his community.

This discipline, for those who feel called upon to lead, requires a greater sense of humility, too. This reminds me of a passage in the Holy Scripture which mentions that "Two men went up to the temple to pray, the one a Pharisee and the other a publican. The Pharisee stood and began to pray thus within himself: 'O God, I thank Thee that I am not like the rest of men, robbers, dishonest, adulterers, or even like this publican. I fast twice a week; I pray tithes of all that I possess.' But the publican, standing far off, would not so much as lift up his eyes to heaven, but kept striking his breast, saying 'O God, be merciful to me the sinner!' I tell you, this man went back to his home justified rather than the other; for everyone who exalts himself shall be humbled, and he who humbles himself shall be exalted."

It is gratuitous to point out that we have come upon perilous times. For us in the Philippines who are bending every effort to attain recovery after the most destructive war we have known, the burden of staying free and building an economy favorable to the health of democracy is not anything we can just shift to somebody else's shoulder. It is not anything that can be disposed of by merely striking an attitude and making a gesture. We must consult our powers and use them for the most constructive purpose. The times demand that we prepare even as we repair, that we graduate from negative into positive action. For a good while we have been taking a kind of neurotic pleasure in flagellating ourselves, confessing to all and sundry what is wrong with us. It is time we realized what is right with us and proceed to act upon it.

In the magnitude of the difficulties that we face, there should be little enough leisure permitted to undermine our discipline with personal hates, sectional grudges or partisan suspicion. We can work to better purpose concentrating on the positive things that we must bring into

being to give tranquillity to our hearts security to our homes, stamina to our resistance to new mistiques disguising the approach of a new despotism and to the naked violence that is ultimately invoked to insure its primacy in our midst.

I am heartened by the efforts of many of our younger elements in the field of civic and economic action who are trying to bring greater goodwill and understanding in our midst. I am heartened by their definite efforts to work out proposals to raise our economic productivity and bring a rational balance between the demands of rising living standard and our people's capacity to provide for them. I am heartened by the increasing thought they are giving to the economic realities of our situation and the positive approaches needed to give substance to our aspirations to peace, freedom and plenty.

The effectiveness of our troops who will fight for peace and freedom abroad rests on what we are and what we do at home, on the discipline we impose on ourselves to reduce dissension and increase understanding and cooperation, to graduate from largely negative to mainly positive thought and action, to vindicate our willingness to assume the obligations of freedom and self-respect, accepting our limitations but exerting ourselves to the limit to pay the cost.

We are in our Promised Land, but we certainly are quite a ways off the picnic grounds. We are in no period to relax and we cannot afford the luxury of despair. There is only, for us, the job of taking hold of ourselves, believing in God, and facing up to our difficulties which are our only opportunity to deserve our heritage and pass it on improved to our children.

Messages received in Malacañan Palace from the Philippine embassy at Washington, D. C. and the President of the Republic of Indonesia, August 28, 1950:

The following cablegram was received by President Quirino from Ambassador Joaquin M. Elizalde:

"PRESIDENT QUIRINO, MANILA

"IN SIMPLE CEREMONY AT OFFICE OF SECRETARY OF DEFENSE JOHNSON THIS MORNING I WAS PROUD AND HAPPY TO REPRESENT YOU AND HEAR SECRETARY JOHNSON REITERATE SENTIMENTS EARLIER EXPRESSED BY PRESIDENT TRUMAN TO YOU OF THE GRATITUDE AND PRIDE OF THE UNITED STATES GOVERNMENT IN FORMAL ACCEPTANCE YOUR OFFER ONE REGIMENTAL COMBAT TEAM, MAINTAINED AND

EQUIPPED BY THE PHILIPPINE GOVERNMENT FOR SERVICE WITH THE UNITED NATIONS FORCES IN KOREA UNDER ABLE COMMAND GENERAL MACARTHUR. IN REPLY I STATED IN PART 'WE HOPE OUR BOYS WILL DO A GREAT SERVICE AS THEY HAVE BEFORE WHEN THEY FOUGHT SHOULDER TO SHOULDER WITH AMERICAN SOLDIERS. I HAVE BEEN INSTRUCTED BY PRESIDENT QUIRINO TO INFORM THAT THE PHILIPPINE GOVERNMENT IS NOW READY TO DISPATCH IMMEDIATELY AN INITIAL CONTINGENT OF ONE BATTALION COMBAT TEAM OF ONE THOUSAND TWO HUNDRED OFFICERS AND MEN COMPLETE WITH ALL NECESSARY EQUIPMENT. REGARDS."

The following cablegram was received by President Quirino from President Soekarno of the Republic of Indonesia:

"HIS EXCELLENCY ELPIDIO QUIRINO
PRESIDENT OF THE PHILIPPINE REPUBLIC
MANILA

"ON BEHALF OF THE GOVERNMENT AND PEOPLE OF INDONESIA I WISH TO EXPRESS TO YOUR EXCELLENCY OUR GRATEFUL APPRECIATION FOR THE CONGRATULATIONS ON THE OCCASION OF THE INDONESIAN INDEPENDENCE DAY. THE GOOD WISHES EXPRESSED IN YOUR EXCELLENCY'S FELICITATIONS WILL GIVE US THE INSPIRATION TO FACE THE FUTURE WITH THE CONFIDENCE THAT ORIGINATES FROM THE FRIENDSHIP THAT EXISTS BETWEEN THE PHILIPPINE REPUBLIC AND INDONESIA."

Radio address of His Excellency, President Elpidio Quirino, delivered on a nation-wide hookup, August 30, 1950:

My Beloved Fellow Countrymen:

Last Sunday morning, the nation was horrified by the news of the massacres of Tarlac, of Santa Cruz, San Rafael, and Tayug.

We all read and heard those horribly true tales of murder, of rapine, of burning. Of helpless patients in a hospital butchered, even as they lifted weakening arms in pitiful appeals for mercy. Of nurses raped and murdered, and of doctors ruthlessly slain as they struggled to save their sick. Of unarmed, helpless people shot down before their homes, of those homes burned.

This was not done by an alien invader. What hands slaughtered those sick men in the hospital at Camp Makabulos, those unarmed men, and women and children elsewhere? What hands set the torch to the homes? Whatever power may have been behind this crime, the criminal, bloodstained hands were hands which we should have loved to grip in brotherhood, but could not.

Do we want this Red Hand of murder to spread over our country?

If we do not—and I do not need to ask the question more than once—then the government and the people, must unite and rise to wash off this Red stain—or shackle the Red Hand.

The danger posed by the dissidents under the Red banner of violence has achieved a new record of horror. The next victims may be anyone of you. In the end, it can strike us all. Our tragedy is cut out of a world pattern of terror and enslavement, with its loose ends right at our door.

Heaping mutual criticism, no longer helps. It only depresses our fighting forces. They need encouragement and sympathy too—something that will lift their morale. Public support will achieve this.

Every time we pause to strike at each other in mutual recriminations, to hurl charges and counter charges, the leaders of Communism rejoice. We make it so much the easier for them to murder our fellow citizens, lay waste our homes, destroy our morale and resistance and submerge us in fear.

Because they are after power, not after reforms, they cynically exploit our policies of amnesty, amelioration and attraction to give themselves time and resources to destroy what we seek to build.

They think the time is ripening for reaping the harvests of fear. The question now is: Shall we sit in complacency, with folded arms, and watch or wait for further carnage?

My beloved countrymen, I appeal to you and for you. Rally to your government, which is yourselves. Give the necessary civilian assistance and encouragement. I ask you to organize. Whether the forces of the government are large or small, they can do little to meet the menace of the Red Hand unless you, the people—you and I, rally behind them. Stand with them where they are strong. Step in to support them where they are weak.

I do not ask you to protect the government, or this or that government official. I call on you to protect those things which are above government. Your homes, your families, the schools for your children, the hospitals for your sick, the churches in which you worship.

Our good people, UNITE. Citizens of this free land, form yourselves into battalions of peace. Form your community assemblies, your neighborhood associations, your barangays for peace. Call on the civic organizations. Even the charitable institutions, religious institutions, the Boy Scouts, the Girl Scouts, Parent-Teacher Associations and

other civic and charitable institutions and our labor unions in every municipality. I ask you to call on them and all the prominent citizens of each community. Go on the alert. The enemy is around you, so learn of the enemy. Information is security. Unite to get the information. Relay it immediately to the nearest peace officers.

You have heard of the Civilian Guards condemned. This, because their loyalty was to the man or the group that hired them. Take over the civilian guards. Form your community chests. Many there are who are contributing for less patriotic purposes. Our government is poor, but our individual citizenry is not poor. Every one can afford to contribute to a common peace fund. Fill those chests with your contribution. Name your own trusted men to disburse them, and make the Civilian Guards YOUR guards—Loyal to the people.

I do not call you to campaign of war. I summon you to a campaign for peace. Unite, my dear friends, to keep the dread Red Hand of Murder from your doorsteps. This our fight to preserve our Philippines.

Letter of the President of the Philippines accepting the resignation of the Secretary of National Defense, August 31, 1950:

The President's letter accepting Secretary of National Defense Ruperto K. Kangleon's resignation is quoted in full as follows:

"My dear Secretary KANGLEON:

"In deference to your request, I hereby accept your resignation as Secretary of National Defense effective today. I regret that under the present circumstances I cannot continue availing myself of your services in the Cabinet, but I wish to entertain the hope that you will again answer the call of duty when the public interests so require.

"My association with you in the cabinet has been most pleasant and I am deeply appreciative of your loyalty and effective coöperation and support, both in the party as well as in the government.

"I wish you every success in your future undertaking.

"Sincerely,

"(Sgd.) ELPIDIO QUIRINO

DECISIONS OF THE SUPREME COURT

[No. L-1677. January 28, 1949]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* CIRILO HUMARANG, defendant and appellant

CRIMINAL LAW; TREASON; ADHERENCE TO THE ENEMY BY GIVING HER AID AND COMFORT.—Upon the evidence on record, the court is satisfied that appellant, being a Filipino, adhered to the enemy by giving her aid and comfort, said aid consisting in helping in the arrest in the Biwas cockpit of guerrillas and suspected guerrillas.

APPEAL from a judgment of the People's Court.

The facts are stated in the opinion of the court.

Servillano P. Tabangay for appellant.

Assistant Solicitor General Ruperto Kapunan, Jr. and *Solicitor Jose P. Alejandro* for appellee.

PERFECTO, *J.:*

The information charged appellant with treason on four counts, but the prosecution offered evidence only on two, first for having surrendered George Eddleman, an American, to Captain Nakamuri, a Japanese officer, at the latter's residence in Cavite, and second for pointing to the Japanese several persons who were arrested in May, 1944 in the Biwas cockpit, Tanza, on the occasion of the performance of a *sarzuela,* which means to include light opera and other minor dramatic plays.

As to Eddleman's surrender, Laura Muffmaster, an intelligence officer of the U. S. army belonging to the Sixth Military Garrison, testified that some time in 1943, she saw and talked with the American in the house of Captain Nakamuri. She also saw there appellant. The American told her that he was 21 years old. Irene de Castro, having been advised by a boy of the presence of the American, testified that she went to the house of Captain Nakamuri to have a look at the prisoner, as it was a long time that she had not seen an American. Catalino Lubigan testified that he happened to ride with appellant and the American in a rig in barrio Calibuyo and separated from them upon reaching Tanza. Some time later, appellant told Catalino that he was taking the American to the Japanese Military Police, and Catalino saw the American crying when he was about to be surrendered.

Regarding the cockpit incident, there is overwhelming evidence, half a dozen witnesses having testified, to the effect that at about 9 o'clock at night there was a commotion in the cockpit, and shouts for the people to lie down. Several shots had been fired at Rafael Sidamon who was running to escape from the cockpit. There were

shouts of "guerrilla, guerrilla!" and, from one Carlos Humarang, that Sidamon was the bodyguard of Ernie, a guerrilla chieftain. The Japanese entered the cockpit with Filipino companions, among them appellant Cirilo Humarang. The Japanese herded the people gathered there, numbering about 300, separating the women who were brought outside the cockpit, while the men were left inside and then made to line up. Appellant walked following the line and once in a while had to stop and look at the person in front of him. All the persons thus singled out were apprehended by the Japanese and have never been seen again. About 26 persons were apprehended, including Esteban Ernie and Agustin de Castro. The whole proceeding lasted for a long time, as the persons not arrested were allowed to leave the cockpit only the next morning.

The defense tried to show that appellant was a guerrilla and the leader of a small group of Filipinos who kept George Eddleman hidden somewhere in Tanza from May, 1942, until 1944. In February, 1944, appellant transferred the American to Naic, because the woods in Tanza where he was hidden had been frequented by the Japanese. Sometime thereafter, appellant was taken by the Japanese and brought to the house of Captain Nakamuri for the purpose of identifying the American because, as told by two Filipino spies (Captain Pio and Juan Pugot) to appellant, there were several persons who pointed to appellant as the one who concealed the American. In May, 1944, appellant, with his elbows tied at his back, was brought by the Japanese and the Filipino spies to the Biwas cockpit in Tanza, for the purpose of pointing out the persons who had been telling that it was the accused who had kept Eddleman in hiding, the names of whom were written in a list kept by the two Filipino spies referred to by appellant. After the people in the cockpit had been lined up, appellant was able to point to the Japanese only two, Esteban Ernie and Agustin de Castro, the only ones he knew among those listed. According to him, for not identifying the others, he was brought to the Japanese garrison in Tanza, where he was severely tortured, as a result of which he fell unconscious. When he recovered consciousness he was already in Naic and being treated by Dr. Jose, a guerrilla physician. He was bleeding in his head and in his scrotum. According to his witnesses, the guerrillas attacked the Japanese garrison and were able to rescue appellant who, thereafter, continued his guerrilla activities and fought against the Japanese.

He was also treated by Dr. Poblete for some abscess which might have been the result of low vitality caused by the maltreatment received by appellant. Upon in-

spection made by members of the trial court at the hearing of this case, it was found that, although retaining the scrotum, appellant had lost his two testicles.

Appellant's allegation that at the cockpit incident he had his elbows tied at his back is contradicted by the several witnesses for the prosecution who testified that appellant was not tied but, on the contrary, had free movement of his whole body and arms during the whole proceedings. He even carried firearm.

The evidence of the prosecution as to the surrender of George Eddleman made by appellant would not be, under the two-witness rule, enough to convict appellant of treason, as only one witness, Catalino Lubigan, testified as to appellant's delivery of the American to the Japanese Military Police. The testimonies of Laura Muffmaster and Irene de Castro have only the effect of showing that they had seen the American and appellant in the house of Captain Nakamuri but not one of them testified that appellant had surrendered the American to the Japanese. But prosecution's failure to prove the first count is immaterial to the result of this case, as there is overwhelming evidence to prove the second count, concerning the Biwas cockpit arrests.

Although no specific date has been given as to the cockpit arrest, both the witnesses for prosecution and for the defense, including appellant himself, agreed that it took place one night in May, 1944, on the occasion of a *sarzuela*, and there can be no question that prosecution and defense witnesses refer exactly to the same incident.

Upon the evidence on record, the court is satisfied that appellant, being a Filipino, adhered to the enemy by giving her aid and comfort, said aid consisting in helping in the arrest in the Biwas cockpit of guerrillas and suspected guerrillas. The trial court sentenced him to life imprisonment (*reclusión perpetua*) with the accessory penalties prescribed by law, and to pay a fine of ₱10,000 with costs.

The appealed judgment, being supported by the facts and the law, is affirmed.

Moran, C. J., Parás, Feria, Pablo, Bengzon, Briones, Tuason, and *Montemayor, JJ.,* concur.

Judgment affirmed.

[Nos. L–1642–44. January 29, 1949]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* ALEJANDRO MENDIOLA, FLORENTINO ZAPANTA and GREGORIO REYES, defendants and appellants.

1. CRIMINAL LAW; MURDER; CONSPIRACY TO KIDNAP; RESPONSIBILITY OF THE ACTORS.—The circumstances of the case, as proved by the evidence, lead us to the conclusion that each and everyone of appellants took part with T. V. R. in a conspiracy to kidnap

as they did T. A. and they are all equally responsible for his killing, which was perpetrated in accordance with the plan of the kidnappers. Once the kidnapping has been decided, the authors necessarily had to entertain the killing as one of the means of accomplishing the purposes of kidnapping.

2. CRIMINAL PROCEDURE, RULES OF; DISCHARGE OF ONE OF DEFENDANTS; AT WHAT STAGE WILL IT BE EFFECTED; SECTION 9 OF RULE 115, CONSTRUED.—The discharge contemplated in the clear text of section 9 of Rule 115 is the one effected or which can be effected at any stage of the proceedings, from the filing of the information to the time the defense starts to offer any evidence. The clause "any time before they have entered upon their defense," used in the section, is so clear as not to give rise to any misunderstanding. The words "any time before" imply an indefinite period of time limited only by the time set by a court's jurisdiction and the very nature of things, and that limit is set at the instant of the filing of the information.

3. ID.; ID.; REQUISITES; EFFECT.—Before the discharge is ordered, the prosecution must show and the trial court must ascertain that the five conditions fixed by section 9 of Rule 115 are complied with. But once the discharge is ordered, any future development showing that any or all of the five conditions have not actually been fulfilled, may not affect the legal consequences of the discharge, as provided by section 11 of Rule 115. Any witting or unwitting error of the prosecution in asking for the discharge and of the court in granting the petition, no question of jurisdiction being involved, cannot deprive the discharged accused of the acquittal provided by section 11 of Rule 115 and of the constitutional guarantee against double jeopardy.

4. ID.; ID.; ID.; ID.—The exception of the proviso of section 11 of Rule 115 against the defendant who "fails to testify against his co-defendant" refers exclusively to a failure attributable to defendant's will or fault. It is unfair to deprive defendant of an acquittal for a failure attributable to the prosecution, and it would be an abhorrent legal policy to place defendant's fate at the mercy of anyone who may handle the prosecution. The willingness or unwillingness of the discharged defendant is the only test that should be taken to determine whether or not he fails to testify against his co-defendant and, consequently, whether or not he should be excluded from the benefits of the acquittal provided by section 11 of Rule 115. In the present case, it is not disputed that A. M. had always been willing to testify for the prosecution and upon the same facts bared to the prosecution for which the latter, among other grounds, decided to move for his discharge from the information. As a matter of fact, although testifying for himself, he reiterated substantially in open court what he had testified before the officers for the prosecution. Under the circumstances and the law, he is protected by the constitutional guarantee against double jeopardy.

APPEAL from a judgment of the Court of First Instance of Manila. Rodas, J.

The facts are stated in the opinion of the court.

Camilo Formoso and *Laurel, Sabido, Almario & Laurel* for appellant Alejandro Mendiola.

Miguel Tolentino for appellants Gregorio Reyes and Florentino Zapanta.

Assistant Solicitor General Guillermo E. Torres for appellee.

PERFECTO, *J.*:

Justina Rizal and Teofilo Ampil, spouses, had been quarrelling because of the latter's amorous relations with other women. During the Japanese occupation they were invited to live with her brother Dr. Sisenando Rizal in Calamba. There were times during which he did not sleep there. There were occasions on which husband and wife were not on speaking terms. Justina went to the extent of complaining to her brothers and sisters against her husband.

On March 31, 1946, her brother Taciano V. Rizal came from Calamba to Manila in a weapons carrier, accompanied by appellants Alejandro Mendiola, Florentino Zapanta and Gregorio Reyes, his townmates. In the evening of the same day, Taciano borrowed an ambulance car from Arturo Gomez. Later, Taciano alone went to the house of his sister Justina at 514 Aviles, Manila, and talked with her for a short time. On that same evening, appellants passed the night together in the same sala in a house in Paco.

Early in the morning of the next day, Taciano and the three appellants got the ambulance of Arturo Gomez and drove it to Teofilo's house in Aviles. Upon seeing Teofilo they forced him to go with them in the ambulance. After sometime they were driving through Taft Avenue. At about 7 o'clock in the morning, upon reaching the intersection of Libertad, Teofilo jumped out of the car through the back door. Alejandro Mendiola shot him. After the shooting Taciano and appellants scampered away. Teofilo was helped by traffic policeman Leonardo Roxas, who took him to the Philippine General Hospital, where a few days later he died due to generalized peritonitis and hyphostatic pneumonia, secondary to gunshot wounds through the abdomen, lacerating the omentum and transversing the colon.

Sometime later appellant Alejandro Mendiola was arrested and some time after him the other two appellants. Taciano V. Rizal continues to be at large.

There cannot be any question as to the participation of the three appellants in the commission of the crime in question. The three of them have testified about their joining Taciano from Calamba until all of them boarded the ambulance car with Teofilo, up to the corner of Taft Avenue and Libertad, where Teofilo was shot. They disagree, however, as to who fired the fatal shot. Mendiola says it was Taciano who fired it, while the other two appellants say that it was Mendiola. We are convinced that the latter's version is the correct one, although for the purposes of this case the effect would be the same whether the shot was fired by Taciano or by Mendiola.

The circumstances of the case, as proved by the evidence, lead us to the conclusion that each and everyone of appellants took part with Taciano V. Rizal in a conspiracy to kidnap as they did Teofilo Ampil and they are all equally

responsible for his killing, which was perpetrated in accordance with the plan of the kidnapers. Once the kidnaping has been decided, the authors necessarily had to entertain the killing as one of the means of accomplishing the purposes of kidnaping.

The three appellants were correctly found by the trial court guilty as authors of the crime of murder. It sentenced them to death and to pay jointly and severally the heirs of Teofilo Ampil in the sum of ₱2,000 with subsidiary imprisonment in case of insolvency and to pay the costs.

With regard to appellants Gregorio Reyes and Florentino Zapanta, the principal penalty must be changed to *reclusión perpetua*, insufficient votes having been cast to affirm the appealed judgment, and there is even a minority opinion that they can be held only as accomplice.

The case with respect to Alejandro Mendiola calls for the application of sections 9 and 11 of Rule 115 which read as follows:

"SEC. 9. *Discharge of one of several defendants to be witness for the prosecution.*—When two or more persons are charged with the commission of a certain offense, the competent court, at any time before they have entered upon their defense, may direct any of them to be discharged with the latter's consent that he may be a witness for the government when in the judgment of the court:

"(*a*) There is absolute necessity for the testimony of the defendant whose discharge is requested;

"(*b*) There is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of said defendant;

"(*c*) The testimony of said defendant can be substantially corroborated in its material points;

"(*d*) Said defendant does not appear to be the most guilty;

"(*e*) Said defendant has not any time been convicted of any offense involving moral turpitude.

"SEC. 11. *Discharge of defendants operate as acquittal.*—The order indicated in the two preceding sections shall amount to an acquittal of the defendant discharged and shall be a bar to future prosecution for the same offense, unless the defendant, in the case provided in section 9 fails or refuses to testify against his co-defendant."

It appears that the original information for murder committed on the person of Teofilo Ampil was filed on April 27, 1946, against Taciano V. Rizal alone. On October 30, 1946, an amended information was filed including new defendants, among them Alejandro Mendiola. On November 6, 1946, assistant city fiscal Engracio Abasolo filed a motion to discharge defendant Alejandro Mendiola in order that he may be utilized as witness for the prosecution, which motion was granted.

On December 26, 1946, another independent information was filed for the same murder against Gregorio Reyes.

On January 31, 1947, a new information was filed for the same murder against Taciano V. Rizal, Vicente Llamas and the three appellants, including Alejandro Mendiola.

On February 7, 1947, counsel moved to quash the new information against Alejandro Mendiola on the ground that he has previously been acquitted of the offense charged. The motion was denied, and erroneously.

The prosecution contends that appellant Mendiola is not entitled to the benefits of section 11 of Rule 115 on the following grounds:

1. Because Mendiola, upon developments subsequent to his discharge on November 6, 1946, appears to be one of the most guilty, for having fired the fatal shot, his discharge having been based on the main proposition that by using him as a witness the prosecution would be enabled to prove its case against the most guilty accused, and the prosecution no longer wanted to avail, as it never availed, of his testimony to successfully prosecute the real and most guilty culprits.

2. That the failure to testify mentioned in the proviso of section 11 of Rule 115 comprehends the failure due to the prosecution's omission or refusal to use the discharged accused as its witness.

3. That the discharge, to operate as an acquittal under section 11 of Rule 115, must have taken place after the discharged accused shall have been arraigned and shall have entered his plea and after the trial of the case shall have actually begun, and Mendiola had not even been arraigned when he was discharged on November 6, 1946.

The above three propositions announced by the prosecution are not supported either by law or by reason.

The discharge contemplated in the clear text of section 9 of Rule 115 is the one effected or which can be effected at any stage of the proceedings, from the filing of the information to the time the defense starts to offer any evidence. The clause "any time before they have entered upon their defense," used in the section, is so clear as not to give rise to any misunderstanding. The words "any time before" imply an indefinite period of time limited only by the time set by a court's jurisdiction and the very nature of things, and that limit is set at the instant of the filing of the information.

Before the discharge is ordered, the prosecution must show and the trial court must ascertain that the five conditions fixed by section 9 of Rule 115 are complied with. But once the discharge is ordered, any future development showing that any or all of the five conditions have not actually been fulfilled, may not affect the legal consequences of the discharge, as provided by section 11 of Rule 115. Any witting or unwitting error of the prosecution in asking for the discharge and of the court in granting the petition, no question of jurisdiction being involved, cannot deprive the discharged accused of the acquittal provided

by section 11 of Rule 115 and of the constitutional guarantee against double jeopardy.

The exception in the proviso of section 11 of Rule 115 against the defendant who "fails to testify against his co-defendant" refers exclusively to a failure attributable to defendant's will or fault. It is unfair to deprive defendant of an acquittal for a failure attributable to the prosecution, and it would be an abhorrent legal policy to place defendant's fate at the mercy of anyone who may handle the prosecution. The willingness or unwillingness of the discharged defendant is the only test that should be taken to determine whether or not he fails to testify against his co-defendant and, consequently, whether or not he should be excluded from the benefits of the acquittal provided by section 11 of Rule 115. In the present case, it is not disputed that Alejandro Mendiola had always been willing to testify for the prosecution and upon the same facts bared to the prosecution for which the latter, among other grounds, decided to move for his discharge from the information. As a matter of fact, although testifying for himself, he reiterated substantially in open court what he had testified before the officers for the prosecution. Under the circumstances and the law, he is protected by the constitutional guarantee against double jeopardy.

Accordingly, the appealed decision is modified and reversed in part, and appellant Gregorio Reyes and Florentino Zapanta are sentenced to *reclusión perpetua* and to jointly and severally indemnify the heirs of Teofilo Ampil in the sum of ₱2,000, and to pay the costs, and appellant Alejandro Mendiola is acquitted and shall immediately be released upon promulgation of this decision.

Moran, C. J., Bengzon, Briones, Tuason, and *Montemayor, JJ.,* concur.

PARÁS, *J.,* concurring and dissenting:

I dissent from the decision of the majority in so far as it finds the appellants, Florentino Zapanta and Gregorio Reyes, guilty of murder as principals. There can be no doubt that Taciano Rizal, still at large, planned to kidnap his brother-in-law, Teofilo Ampil; but I am not convinced that appellants Zapanta and Reyes conspired with him. Indeed, it is admitted by the trial court and the Solicitor General that there is no direct evidence of conspiracy. In all probability, said appellants were, as testified to by them, invited by Taciano Rizal to leave Calamba, Laguna, for a sight-seeing trip to Manila. From the mere fact that Zapanta and Reyes had been with Taciano Rizal from the time they left Calamba to the moment Teofilo Ampil was shot by appellant Alejandro Mendiola while jumping out of the car in which he was asked to ride by Taciano on Aviles Street, we cannot safely deduce that Zapanta

and Reyes had previous knowledge of Taciano's murderous designs. The prosecution has not imputed to either Zapanta or Reyes any positive act that would tend to make them principals under article 17 of the Revised Penal Code. Neither may guilty knowledge on the part of Zapanta and Reyes be inferred from their failure to stop Alejandro Mendiola from shooting Teofilo Ampil or to report the crime to the authorities, because they could not foresee that Ampil would jump out of the car or that Mendiola would shoot Ampil, and because it is not unlikely that they might have been threatened, after the incident, not to make any revelation. In my opinion, appellants Zapanta and Reyes can at most be held guilty as accomplices.

PABLO, *M.*, concurrente y disidente:

Concurro con la opinión de la mayoría que absuelve a Alejandro Mendiola.

Disiento en cuanto condena a los acusados Gregorio Reyes y Florentino Zapanta.

He revisado las pruebas obrantes en autos y en ellas no hay el más ligero indicio de que dichos acusados hayan tenido participación en el asesinato de Teófilo Ampil. Las conclusiones de hecho de la mayoría son del tenor siguiente:

"Early in the morning of the next day, Taciano and the three appellants got the ambulance of Arturo Gomez and drove it to Teofilo's house in Aviles. Upon seeing Teofilo they forced him to go with them in the ambulance. After sometime they were driving through Taft Avenue. At about 7 o'clock in the morning, upon reaching the intersection of Libertad, Teofilo jumped out of the car through the back door. Alejandro Mendiola shot him. After the shooting, Taciano and appellants scampered away. Teofilo was helped by traffic policeman Leonardo Roxas, who took him to the Philippine General Hospital, where a few days later he died due to generalized peritonitis and hyphostatic pneumonia, secondary to gunshot wounds through the abdomen, lacerating the omentum and transversing the colon."

En mi opinión, Taciano y Alejandro fueron los únicos autores del asesinato de Teófilo Ampil. En la mañana del día primero de Abril, Taciano acompañado por Alejandro, Florentino y Gregorio, fué al lugar donde estaba la ambulancia de Arturo Gómez. Cuando Taciano vió a Teófilo, le invitó a que subiera a la ambulancia, y Alejandro apunta de su revólver le obligó a Teófilo que se embarcara. Florentino y Gregorio no han hecho nada: solamente estaban sentados dentro del coche. Cuando en la encrucijada de la avenida Taft y calle Libertad, Teófilo se escapó, Alejandro le disparó dos tiros, uno de los cuales causó su muerte en el hospital. Florentino y Gregorio no han tenido ninguna participación ni en el secuestro de Teófilo, ni en la parada del coche, ni en el disparo del revólver. Cuando oyeron el disparo, echaron a correr. No hay ninguna prueba si hubo un acuerdo entre los cinco acusados (uno de ellos es Vicente Llamas, que ya fué absuelto por el

Juzgado *a quo*) de lo que habían de hacer en Manila. Por el contrario, según la declaración de los acusados Florentino y Gregorio, habían seguido a Taciano en *jeep* porque fueron invitados para hacer un paseo en Manila. No hay nada de extraño en que los dos acusados hayan aceptado la invitación de Taciano: cualquiera, en aquellas circunstancias, hubiera obrado de la misma manera, para tener oportunidad de ver los efectos que había dejado el bombardeo de Manila. El mismo ministerio fiscal admite en su alegato que no existe ninguna prueba sobre la conspiración. El delito de que fueron acusados los cuatro es el de asesinato. Taciano y Alejandro son los verdaderos autores: el primero fué el que manejó la ambulancia en el sucuestro, y el otro fué el que amenazó con su revólver a Teófilo a subir al coche y fué el que le disparó el tiro al echar a correr. Florentino y Gregorio no han hecho nada en el asesinato de Teófilo. Son autores, según el artículo 17 del Código Penal Revisado, "1.° Los que toman parte directa en la ejecución del hecho. 2.° Los que fuerzan o inducen directamente a otros a ejecutarlo. 3.° Los que cooperan a la ejecución del hecho por un acto sin el cual no se hubiera efectuado."

Florentino y Gregorio no han cometido ningún acto sin el cual no se hubiera efectuado el asesinato. Si existiera prueba de que hubo un plan o acuerdo entre los cuatro en secuestrar y matar a Taciano, desde luego todos serían responsables de las consecuencias de su acuerdo, aunque los dos, Florentino y Gregorio, no hubieran hecho nada. Su presencia en la ambulancia no riñe ni es incompatible con su defensa de que eran simples invitados para pasearse en Manila. Pudiera suceder que entre Taciano y Alejandro haya habido acuerdo de invitarles a los dos como simples compañeros, sin comunicarles su intención criminal de secuestrar a Teófilo y matarle si fuese necesario. Para que se les pueda considerar como coautores es necesario que haya prueba de que hayan tomado parte con actos positivos en la comisión del delito o hayan inducido directamente a Taciano o Alejandro a cometarlo o hayan cooperado en la comisión del mismo por un acto sin el cual no se hubiera cometido el delito. Qué acto han hecho Florentino y Gregorio? Ninguno. Vamos a suponer por un momento que en aquel momento de la fuga de Teófilo no estuvieran presentes en la ambulancia Florentino y Gregorio, no se hubiera podido cometer el asesinato del mismo modo? La ausencia de los dos no hubiera cambiado el trágico cuadro: los únicos actores fueron Taciano y Alejandro. De manera que la presencia de Florentino y de Gregorio en el momento del disparo del revólver a Teófilo no contribuyó en lo más mínimo en la realización del delito. No pueden ser, por tanto, considerados como coautores Florentino y Gregorio.

Tampoco pueden ser cómplices porque no cooperaron en la ejecución del hecho por actos anteriores o simultáneos,

pues el artículo 18 del Código Penal Revisado dice que: "Son cómplices los que, no hallándose comprendidos en el artículo 17, cooperan a la ejecución del hecho por actos anteriores o simultáneos."

Tampoco pueden ser encubridores, porque el artículo 19 del Codigo Penal Revisado dispone que: "Son encubridores los que, con conocimiento de la perpetración del delito, sin haber tenido participación en él como autores ni cómplices, intervienen con posterioridad a su ejecución de alguno de los modos siguientes: 1.º Aprovechándose por sí mismos o auxiliando a los delincuentes para que se aprovechen de los efectos del delito. 2.º Ocultando o inutilizando el cuerpo, los efectos o los instrumentos del delito para impedir su descubrimiento. 3.º Albergando, ocultando o proporcionando la fuga al autor del delito, cuando el encubridor lo hace con abuso de funciones públicas o cuando aquél lo fuere de traición, parricidio, asesinato, atentado contra la vida del Jefe Ejecutivo, o reo conocidamente habitual de otro delito."

Tampoco hay pruebas de que los acusados hayan proporcionado la fuga de Taciano y Alejandro. Los autos demuestran que después del disparo fatal los cuatro acusados se fugaron a la desbandada: cada uno se escabulló lo mejor que pudo. Nadie ayudó a nadie.

La mera presencia de Gregorio y Florentino, pues, en la comisión del delito no les hace responsables ni como autores, ni cómplices, ni encubridores.

El Tribunal Supremo de España en su sentencia de 13 de Marzo de 1884 dijo que:

"El presenciar un sujeto un asesinato cometido por su hermano en la persona de un común enemigo de ambos, con el cual tuvieron anteriormente los dos una cuestión, y el proferir mientras se cometía el crimen algunas palabras amenazadoras, sin que se sepa cuáles fuesen ni á quién se dirigían, no es suficiente para determinar la complicidad en el delito, fundándose en que, si bien el procesado dió origen á la primera cuestión, y más después acompañó al agresor y estuvo presente á la perpetración del crimen, vertiendo algunas palabras amenazadoras, que no se dice cuáles eran ni á quién se dirigían, a estos hechos aislados, y sin otros antecedentes que los expliquen, no podía dárseles, sin grave peligro de error, grande importancia, ni suponer por ello participación ó cooperación en el hecho criminal, que es lo que determina legalmente la complicidad de un delito."

En el caso citado se puede lógicamente suponer que el hermano que estaba presente en el asesinato del "común enemigo" y que profirió "algunas palabras amenazadoras" puede haber ayudado con su actitud al asesino. Sin embargo, no son suficientes, según el Tribunal, tales datos para concluir que ayudó en la comisión del delito. En el caso presente, no hay ninguna prueba ni siquiera sobre la actitud que tuvieron los dos acusados Florentino y Gregorio en el momento del secuestro y en el momento del disparo del revólver.

El Tribunal Supremo de España en su sentencia de 20 de Marzo de 1885, casó la de la Audiencia, declarando que es "indispensable elemento de la responsabilidad del cómplice que por actos anteriores o simultáneos ayude, facilite o proteja la ejecución de los hechos constitutivos del delito que otro realice," hechos que no aparecen probados.

Y en su sentencia de 25 de Junio de 1886, al revocar la condena, anunció la siguiente doctrina:

"Considerando, en cuanto al recurso de José Martínez Atalaya, que la Sala sentenciadora declara su responsabilidad en concepto y categoria de cómplice de los delitos después de reconocer que por su parte no realizó acto alguno para su comisión, por el hecho único de haber contribuído a su realización con un acto simultáneo, con su presencia en el lugar donde se cometieron: Considerando que la responsabilidad del cómplice se determina por actos de ayuda y de auxilio, anteriores o simultáneos, prestados conscientemente al autor del delito; y que no siendo de esta clase por sí solo el mero hecho de presenciar la comisión de un delito, cuando no consta, y para los efectos de la casación, cuando no declara el Tribunal *a quo* que esta presencia tenga el objeto de alentar siquiera al delincuente principal o de aparentar o hacer en realidad mayor su fuerza ante las víctimas, no puede sostenerse la declarada de Martínez Atalaya únicamente por ese hecho, después de afirmar en absoluto que entre él y Juan Gómez no resultaba que existiera concierto alguno."

Y por último, este Tribunal en Estados Unidos *contra* Guevara, 2 Jur. Fil., 553, dijo:

"La mera presencia en el tiempo y lugar de la comisión del delito no es por sí sola bastante para constituir un acto simultáneo de cooperación constitutiva de complicidad."

"Cuando una o dos personas juntamente hieren y matan en una reyerta a uno de sus adversarios, su compañero no se puede considerar como autor o cómplice, cuando no se puede probar que ha habido una acción previamente concertada y que haya tenido por objeto inferir la herida mortal, o que dicho compañero tuviese alguna razón para creer que había de hacerse un ataque mortal contra el occiso." (Estados Unidos *contra* Manayao, 4 Jur. Fil., 297; véanse también: Estados Unidos *contra* Naquiraya, 14, Jur. Fil., 246; citando Estados Unidos *contra* Empeinado, 9 Jur. Fil., 631; Estados Unidos *contra* Dasal, 3 Jur. Fil., 6.)

En mi opinión, los dos acusados, Florentino Zapanta y Gregorio Reyes, deben ser absueltos.

FERIA, *J.*:

I concur in this dissenting opinion.

Judgment modified as to appellants Reyes and Zapanta, and reversed as to appellant Mendiola.

[No. L-2186. January 29, 1949]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* JUAN BULATAO, defendant and appellant

CRIMINAL LAW; MURDER; EVIDENCE; UNSUBSTANTIAL DISCREPANCIES OF TESTIMONIES DO NOT DESTROY THEIR VERACITY.—The discrepancies are not of such significance as to destroy their veracity.

It is not improbable that because of the emotions of the moment and of the intensity of L's attention focused on her husband, the image of the company of her mother-in-law could have been completely obliterated from her mind. Such blank spaces in the human mind are not unusual. It is a phenomenon known in psychology as that of persons looking without seeing due to the distraction caused by intense mental concentration.

APPEAL from a judgment of the Court of First Instance of Tarlac. Jose, J.

The facts are stated in the opinion of the court.

Ildefonso de Guzman-Mendiola for appellant.

Assistant Solicitor General Guillermo E. Torres and *Solicitor Francisco Carreon* for appellee.

PERFECTO, *J.:*

In the afternoon of April 19, 1946, at about sunset, four men, looking for the driver of Juan Co Chica, employer of Juan Bulatao, went to the latter's house located in barrio Matatalahib, Tarlac.

Bulatao told them that he was the one they were looking for and asked them what they wanted. They told him to come down "from the house for a while because they wanted to ask something from." What happened immediately thereafter, is narrated by Bulatao himself as follows:

"So I went down the house and again asked them what they wanted to tell me, but without answering that question of mine they boxed me and assaulted me until I fell on the ground, unconscious. When I regained consciousness I was wet and they asked me to sit down and also if I knew why they assaulted me and I told them no. One of them told me that it was due to the wine I drank in the Chinese store. But I remember that the wine which I drank had not been paid for because I usually drink wine at that same store on credit. They told me that the Chinaman reported that I did not want to pay for that wine and that was the reason why they came to hurt me. I explained to them that I usually drink wine at that store on credit, to which they replied that they would take me along to the store. Upon our arrival there, the Chinaman explained to them that I was not the fellow he was referring to but some other person who drank wine at the store on the same time that I did. For this explanation of the Chinaman, the four fellows, who boxed me asked for my forgiveness, and it was also the time when I learned that one of them was Jose Tan. To prove that I did not resent the mistake, because after all the mistake was occasioned by my drinking without paying although I have good credit with the owner of that store, I forgave them and as a matter of fact I even embraced the one introduced to me as Jose Tan, their leader. Then I went home."

At about 4 o'clock on the next morning, April 20, 1946, as testified to by Marta Dungca and Lucia Go, mother and wife respectively of Jose Tan, a lad called for Jose Tan, at the latter's house, located at barrio Matatalahib, built on the lot of Hilarion Cruz about 150 meters beyond the Tarlac railroad station. Tan's companions in the house were his mother, Marta A. Dungca, the latter's mother

Maria Alfaro, 90 years old, his wife Lucia Go, his one year old son, and his sister-in-law Mercedes Go, 14 years old. (8–9).

Tan went down and was met by four persons, one of them Juan Bulatao, and was held by the four. Maria Dungca looked out of the window and asked: "Why? Where will you bring my son?" They answered that they were going to ask him something behind the concrete wall. The four persons held Tan on both arms, at the shoulder and also behind his back. Tan said that he was going to put on his trousers, but they said that it was not necessary. (19). Marta Dungca and Lucia Go went down and tried to follow the group across the railroad track. Before they reached the track, a motor vehicle was heard being driven away, and the two women were not able to overtake the group. (12). The four men were all armed with short barrel guns. (13). The next morning, at about 9 o'clock, the two ladies saw Jose Tan already dead. He had his left eye missing. His occipital region was crushed. The bridge of his nose was broken. His lower lip was swollen. (14).

Juan Bulatao was identified by the two women. Their house was low, its ground floor being less than two meters from the ground. The full moon was shining brightly, and at about fifty meters, there was a big 100 Watt electric bulb of the railroad light lighting the place. (10). The two women had the opportunity of looking at the appellant about five meters away. Marta Dungca saw appellant's face, as Bulatao even looked up. (11). Marta Dungca saw him at about two meters distance. (12).

Appellant tried to deny any participation in the kidnapping of Jose Tan, alleging that he did not leave his house during the early morning of April 20, 1946, until he left to go to his work. He presented the testimony of Teodorica Catalan to corroborate him. The testimonies of Marta Dungca and Lucia Go appear, however, to be positive, straightforward and convincing in identifying appellant, and there is nothing on record to show why they should falsely involve appellant.

From the lips of appellant himself there is conclusive evidence that appellant had an ax to grind against Jose Tan, who happened to be the leader of a gang of notorious characters, from whom appellant received a sound beating the evening previous to the kidnapping.

There are some discrepancies between the declarations of Marta Dungca and Lucia Go. The first said that she went with Lucia to follow Jose Tan up to the railroad track, while Lucia said that she went alone. Marta said that she reported the kidnapping to a neighbor, a policeman, while Lucia said that her mother-in-law reported the matter to the MP's. The discrepancies are not of such significance as to destroy their veracity. It is not improbable

that because of the emotions of the moment and of the intensity of Lucia's attention focused on her husband, the image of the company of her mother-in-law could have been completely obliterated from her mind. Such blank spaces in the human mind are not unusual. It is a phenomenon known in psychology as that of persons looking without seeing due to the distraction caused by intense mental concentration.

Appellant was charged with murder, but was found guilty by the lower court only of homicide with the aggravating circumstance of nocturnity and sentenced to suffer an indeterminate penalty of from eight years and one day of *prisión mayor*, to seventeen years, four months and one day of *reclusión temporal*, with the accessory penalties provided by law, and to pay the heirs of Jose Tan in the sum of ₱2,000.

Upon the facts proved, appellant is guilty of murder qualified by treachery, in which nocturnity is absorbed. He must be credited with the mitigating circumstances of vindication of a proximate offense and voluntary surrender and, therefore, the penalty imposed by the lower court should be modified. The indemnity should also be increased in accordance with the doctrine in People *vs.* Amansec, L–927 (46 Off. Gaz. [Supp. to No. 9], 51). Appellant is sentenced to suffer an indeterminate penalty of from four years, two months and one day of *prisión correccional* to ten years and one day of *prisión mayor*, and to pay an indemnity of ₱6,000 to the heirs of Jose Tan and the costs.[1]

Moran, C. J., Feria, Pablo, Bengzon, Briones, Tuason, and *Montemayor, JJ.*, concur.

Parás, J., concurs in the result.

Judgment modified.

[No. L–2417. January 29, 1949]

DALMACIO CELINO, deceased, substituted by the judicial administratrix of the intestate, petitioner, *vs.* ALEJANDRO BAUTISTA, respondent.

APPEALS; FINDINGS AND CONCLUSION OF FACTS BY THE COURT OF APPEALS.—Whether or not the judgment of the Court of Appeals that declares the contention of the defendant proven or more worthy of credit than that of the plaintiff, and reverses the decision of the lower court without considering the convictions of the defendant of certain offenses as sufficient to affect his credibility, is erroneous or not supported by the evidence, is a question of fact which this court can not pass upon in the present case.

PETITION for review on certiorari.

The facts are stated in the opinion of the court.

Ramon Diokno and *Jose W. Diokno* for petitioner.

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[1] As modified by Resolution of February 14, 1949.

FERIA, *J.*:

The petition for certiorari by way of appeal from the judgment of the Court of Appeals to this Court on the ground that the former has decided a question not in accord with the decision of this Court which remanded this case to it for proper action.

The pertinent part of our decision reads as follows:

"The Court of Appeals clearly erred in not passing upon the liability of the respondent in connection with the checks (Exhibits G, H and I). In his complaint Dalmacio Celino seeks to recover the value of said checks which the respondent allegedly failed to deliver to the former. The respondent was thereby required to account for said value, and this is the reason why in his answer he denies any liability and claims that Dalmacio Celino had admitted having received the amount of the checks and, at the trial, *he introduced evidence tending to show that said amount was applied to debts owing by Dalmacio Celino to the respondent.* Therefore, the plain issue raised by the pleadings and on which the case was tried, is whether Dalmacio Celino has the right to recover the value of the checks. This is exactly the issue which the Court of First Instance of Laguna decided when it sentenced the respondent to pay ₱10,022.61, represented by the checks (Exhibits F, G, H and I). We accordingly hold that it was the duty of the Court of Appeals to determine as a question of fact, upon the evidence of both parties, whether the respondent, who admittedly cashed the checks (Exhibits G, H and I) on behalf of Dalmacio Celino, has satisfactorily proved that he had accounted for their value one way or another, in full or in part. In the affirmative case, the respondent should be absolved from corresponding liability; otherwise he should be sentenced to pay what he has failed to account for.

"It is futile to contemplate the necessity of any further accounting on the part of the respondent, since in this case he had already made allegations that the amount of the checks in question *was received by, or applied to the payment of the debts of, Dalmacio Celino. What remains to be done, is only to verify whether said obligations are supported by the proof,* and this task properly falls *under the fact-finding power of the Court of Appeals.*" (Italics our.)

In accordance with the above quoted directive or decision, the only question or conclusion of fact for the Court of Appeals to find is, whether or not the preponderance of evidence shows that the plaintiff delivered the checks at bar to the defendant in payment of his obligation or debt to the latter or, in the language of the very decision of this Court, "what remains to be done, is only to verify whether said obligations are supported by the proof." "In the affirmative case, the respondent should be absolved from corresponding liability; otherwise he should be sentenced to pay what he has failed to account for."

From a mere cursory reading of the decision of the Court of Appeals it appears evident that said Court has acted in accordance with the foregoing decision. The Court of Appeals, after analyzing and considering the declaration of the plaintiff, who denied the authenticity of his signature affixed in the cash vouchers Exhibits 11, 12, and 31, which correspond to the checks in question, G, H, and I, respec-

tively; the testimony of Jose Sison, accountant and cashier of Kellog and Sons, Inc., about the signing of said vouchers by the plaintiff and the delivery of the corresponding checks to the defendant by express order or instruction of the plaintiff; and the testimony of the defendant, who corroborated the said testimony of Jose Sison and admitted that he has received said checks from the plaintiff and cashed them in payment of the obligation due him from the plaintiff, made the following conclusions or findings of fact and decision:

"La negativa de Celino de haber tenido conocimiento de la expedición de los cheques Exhíbits G, H e I se compagina con los *cash vouchers* Exhíbits 11, 12 y 31 no son suyas, en lo cual le ha sostenido el Juzgado *a quo*. Pero habiendo el Tribunal de Apelaciones llegado a la conclusión de que dichas firmas son auténticas, pronunciamento esto que es hoy firme, cae por su base la afirmación de Celino de que no ha tenido conocimiento de la libranza de tales cheques, ni que los haya él entregado a Bautista. Desacreditado Celino en este particular, lo dicho por Sison de que era la práctica en las transacciones de la casa Spencer Kellog and Sons que el cheque y el *cash voucher* que lo soporta se preparan a la vez, y el interesado a cuyo favor se expide el cheque tiene que firmar el *cash voucher*, para que ambos documentos a su vez se firmen y expidan por el manager o tesorero de la compañia, es de creer; y, en el curso ordinario, es lo que ha sucedido en el presente asunto, en que Celino firmó los *cash vouchers* Exhíbits 11, 12 y 31 y recibió consecuentemente los cheques Exhíbits G, H e I, entregondoles despues a Bautista, quien lás endozó y cobró sus respectivos importes. Bautista asevera que ha recibido los expresados cheques en pago de cantidades tomadas de él en préstamo por Celino. Como no es lo natural que se entreguen cheques, sobre todo de las cantidades que representan los Exhíbits G, H e I, sin causa ni razon, y ninguna de Celino, fuerza es aceptar la alegación de Bautista, de que se los dió en pago.

"Con la revocación de la sentencia apelada, en cuanto condena a Alejandro Bautista a pagar a Dalmacio Celino el importe total de los cheques Exhíbits G, H e I, se confirma en todo lo demás la sentencia apelada, sin costas en esta instancia."

As it is seen, the Court of Appeals predicates its finding of fact that the preponderance of evidence shows that the contention of defendant Bautista that the plaintiff delivered the checks in question in payment of the plaintiff's debt or obligation to the defendant, upon the latter's testimony, corroborated by the presumption *juris tantum* "that a negotiable instrument was given or indorsed for a sufficient consideration" (section 69(*s*) Rule 123); and upon the fact that plaintiff's assertion, given credence by the Court of First Instance, that his signatures in the vouchers Exhibits 11, 12, and 31 were a forgery, in support of his contention that he did not deliver the checks to the defendant Bautista nor did he have any knowledge of their delivery to him, in order to avoid the application of said presumption, had been rejected by the Court of Appeals in its previous decision, already final, promulgated on June 16, 1942, in which it was held that they

are genuine. While the mere denial of plaintiff Celino of the existence of such debt is not supported by any evidence or reason ("* * * sin causa ni razon, y ninguna de Celino").

Whether or not said conclusion of fact of the Court of Appeals that declares the contention of the defendant proven or more worthy of credit than that of the plaintiff, and reverses the decision of the lower court without considering the convictions of the defendant of certain offenses as sufficient to affect his credibility, is erroneous or not supported by the evidence, is a question of fact which this Court can not pass upon in the present case.

Petition for certiorari is therefore denied.

Moran, C. J., Bengzon, Tuason, and *Montemayor, JJ.,* concur.

There being no majority in this case, the petition is deemed denied, in accordance with section 2, Rule 56, of the Rules of Court.

MANUEL V. MORAN
Chief Justice

PARÁS, *J.,* dissenting:

The deceased Dalmacio Celino in his life-time had business transactions with Spencer Kellog & Sons, Inc. His agent was Alejandro Bautista. It appears that the latter cashed ten checks for the total amount of ₱28,024.76, drawn by Spencer Kellog & Sons, Inc. in favor of Dalmacio Celino. Suit was brought in the Court of First Instance of Laguna (civil case No. 6200) whereby Celino sought to recover the amount from Bautista upon the allegation that the latter cashed the checks without the knowledge and consent of Celino to whom Bautista failed to deliver their value. In his answer Bautista set up a general denial and claimed that there had been a liquidation of the accounts between Spencer Kellog & Sons, Inc. and Celino in which the latter admitted having received the value of said checks.

The Court of First Instance of Laguna, on September 30, 1939, rendered judgment sentencing Alejandro Bautista to pay to Dalmacio Celino ₱10,022.61 as the value of four checks (Exhibits F, G, H and I), and absolving Bautista from liability as to the other checks. On Appeal (CA–G. R. No. 6988), the Court of Appeals, in its decision of June 11, 1942, reversed the judgment as regards the checks (Exhibits G, H and I) for the total sum of ₱10,000. The Court of Appeals, against the conclusion of the Court of First Instance of Laguna, found that the cash vouchers upon which the checks (Exhibits G, H and I) were issued, have the genuine signatures of Celino, for which reason it held that the latter had knowledge of the issuance of said checks. However, the Court of Appeals abstained from making any adjudication as to the liability of Bau-

tista for the value of Exhibits G, H and I, or any part thereof, on the ground that no issue was raised in the trial court regarding an accounting with respect to said checks, and, in its resolution on motion for reconsideration, it merely reserved the right of Celino to institute an action for accounting against Bautista.

Upon appeal by the judicial administratrix of the estate of Dalmacio Celino (G. R. No. 48866), the Supreme Court made the following pronouncements in its decision of November 29, 1943:

"* * * We accordingly hold that it was the duty of the Court of Appeals to determine as a question of fact, upon the evidence of both parties, whether the respondent, who admittedly cashed the checks (Exhibits G, H and I) on behalf of Dalmacio Celino, has satisfactorily proved that he had accounted for their value one way or another, in full or in part. In the affirmative case, the respondent should be absolved from corresponding liability; otherwise he should be sentenced to pay what he has failed to account for.

"It is futile to contemplate the necessity of any further accounting on the part of the respondent, since in this case he had already made allegations that the amount of the checks in question was received by, or applied to the payment of the debts of, Dalmacio Celino. What remains to be done, is only to verify whether said obligations are supported by the proof, and this task properly falls under the fact-finding power of the Court of Appeals."

After the record was remanded to the Court of Appeals, upon the express directive of the Supreme Court "to pass upon and decide the question whether, under the evidence adduced by both parties in this case, the respondent is liable to Dalmacio Celino for the value of the three checks (Exhibits G, H and I), or any part thereof," the Court of Appeals, on June 25, 1948, rendered a decision reversing the judgment of the Court of First Instance of Laguna of September 30, 1939, in so far as Alejandro Bautista was sentenced to pay to Dalmacio Celino the total amount of the checks (Exhibits G, H and I). From said decision of the Court of Appeals, the judicial administratrix of the estate of Celino has interposed the present appeal by certiorari.

It should be remembered that the Court of First Instance of Laguna sustained Celino's claim to the value of the checks (Exhibits G, H and I) not only because it found that the cash vouchers upon which said checks were issued by Spencer Kellog & Sons, Inc. did not bear the genuine signatures of Celino, but because of the following factual considerations:

Liquidation Voucher No. 46548 dated December 28, 1931, presented by the defendant as Exhibit 30, does not contain the cash advance of ₱3,000 represented by Check Exhibit G issued upon Cash Voucher Exhibit 11. This liquidation voucher Exhibit 30 is signed by Bautista. Why does not this liquidation voucher contain said cash advance of ₱3,000 made on December 19th? The reason is evident. It is because both Bautista and the company were aware that Celino did not sign the cash voucher Exhibit 11 or receive the check Exhibit F or authorize Bautista to receive and cash it. There can not be

any question, therefore, and the court concludes that the plaintiff did not actually receive the checks, or authorize the defendant to sign the voucher for its issuance, or to receive it and cash it.

With respect to the other checks Exhibits H and I, there is no evidence on record, in view of the finding that the purported signatures thereof of D. Celino are not authentic, to prove that the plaintiff has ever admitted having received them or their value. No liquidation voucher having been shown which has been signed by the plaintiff, just as it had happened with checks Exhibits A, B, C, D and E, there is no admission on the part of the plaintiff that the value of said checks H and I has been received by him.

The only competent evidence to show that Celino has received their value is the testimony of the defendant Bautista to the effect that he had received them in payment of supposed debts which Celino owed him. But his credibility as a witness is conclusively set at naught by the fact that he has been convicted five times for illegal importation of opium, for illegal possession of lottery tickets and for bribery. There is no documentary evidence to corroborate the alleged debts of Celino to him, in spite of the bigness of the amounts involved. If Celino needed money to invest in the purchase of copra, he certainly would have secured it from Spencer Kellog and Sons, Inc., as he was a copra purchaser for them and as he had in fact been doing. Without going any further the court holds that the uncorroborated assertion of a five-time convict is certainly insufficient to overcome the burden of proof imposed upon him by law to prove his claim that the checks were paid to him in payment of supposed debts.

It should be remembered also that Mr. Justice Ozaeta, in concurring in and dissenting from the decision of the Supreme Court of November 29, 1943, had already gone as far as holding that said Court should therein sentence Alejandro Bautista to pay to Dalmacio Celino the value of the checks (Exhibits G, H and I). To quote from Mr. Justice Ozaeta's opinion:

"Second, as to my dissent with regard to the checks Exhibits G, H, and I. These checks for ₱3,000, ₱3,000, and ₱4,000, respectively, were admittedly cashed by the respondent for Dalmacio Celino, and the question is limited to whether or not the latter had received the proceeds thereof from the respondent. Unlike the case as to Exhibits A, B, C, D, and E, there was not a single liquidation voucher signed by Celino wherein the amounts of these checks were debited against him. On the contrary, as the trial court found with regard to Exhibit G, this bears the date December 19, 1931, but it was not included in the subsequent liquidation voucher Exhibit 30 bearing the date December 28, 1931. It was therefore incumbent upon the respondent Bautista to prove that he had paid to Celino the amounts of said checks, or that he had the right to keep them. He attempted to prove the latter. Upon that phase of the case Judge Labrador, in his well-prepared decision, said:

" 'The only competent evidence to show that Celino has received their value is the testimony of the defendant Bautista to the effect that he had received them in payment of supposed debts which Celino owed him. But his credibility as a witness is conclusively set at naught by the fact that he has been convicted five times for illegal importation of opium, for illegal possession of lottery tickets, and for bribery. *There is no documentary evidence to corroborate the alleged debts of Celino to him, in spite of the bigness of the amounts involved.* If Celino needed money to invest in the purchase of copra, he certainly would have secured it from Spencer Kellog & Sons, Inc., as he was a copra purchaser for them and as he had in fact been doing. With-

out going any further the Court holds that the uncorroborated assertion of a five-time convict is certainly insufficient to overcome the burden of proof imposed upon him by law to prove his claim that the checks were paid to him in payment of supposed debts.' (Pages 27–28, bill of exceptions.)

"That finding of the trial court was not reversed by the Court of Appeals, which in resolving petitioner's motion for reconsideration reserved to her the right to bring a separate action against the respondent for an accounting of the proceeds of said checks. The only reason why the Court of Appeals did not render judgment against the respondent for the amount of said checks was that in its opinion the question as to the accounting had not been properly raised in the first instance. The majority having correctly overruled that opinion of the Court of Appeals, I believe this Court is justified in terminating this long-drawn out litigation by modifying outright the judgment of the Court of Appeals in the sense that instead of only ₱22.61 the respondent should pay to petitioner ₱10,022.61."

It should, furthermore, be remembered that in the decision of the Court of Appeals of June 16, 1942, supplemented by its resolution on motion for reconsideration, Dalmacio Celino was held to have signed the cash vouchers upon which the checks (Exhibits G, H and I), were issued; that despite said finding, the Court of Appeals reserved to Celino the right to file the proper action for accounting against Alejandro Bautista; and that, again despite said finding, the Supreme Court on appeal directed the Court of Appeals to decide whether Bautista was liable to Celino for the value of said checks. In other words, the logical inference is that the mere signing by Celino of the cash vouchers and his knowledge of the issuance of the checks did not, and should not, release Bautista (who had admittedly cashed said checks) from his liability to account for their value. Indeed, in its decision of November 29, 1943, the Supreme Court, in view of Bautista's allegation that said checks were delivered to, and cashed by, him in payment of Celino's debts, addressed to the Court of Appeals the specific directive that "*what remains to be done, is only to verify whether said obligations are supported by the proof.*"

Even after the Court of First Instance of Laguna had expressed several factual reasons for sentencing Bautista to pay the value of the checks (Exhibits G, H and I); even after the Supreme Court was specific in telling the Court of Appeals to determine whether there was evidence to support the alleged indebtedness of Celino in favor of Bautista, and even after Mr. Justice Ozaeta in his separate opinion, hereinabove quoted, had already concluded that Bautista should be sentenced to pay the value of said checks, the Court of Appeals, in the decision now the subject of review, contented itself in reversing the judgment of the Court of First Instance of Laguna upon the following grounds:

"Bautista asevera que ha recibido los expresados cheques en pago de cantidades tomadas de él en préstamo por Celino. Como no es lo natural que se entreguen cheques, sobre todo de las cantidades que

representan los Exhíbits G, H e I, sin causa no razón, y ninguna de Celino, fuerza es aceptar la alegación de Bautista, de que se los dió en pago. (Decision of June 25, 1943.)

"Una defensa debil es más fuerte que una reclamación inconsistente, como es este caso, por el arraigo en nuestro enjuiciamento del principio:

"4. PLAINTIFF MUST RELY ON HIS EVIDENCE.—The evidence of the plaintiff may be stronger than that of the defendant. But if it is not sufficient in itself to establish his cause of action, there is no preponderance of evidence on his side. Plaintiff must rely on the strength of his own and not upon the weakness of the defendant's evidence." (Resolution on motion for reconsideration of July 27, 1948.)

In my opinion, the Court of Appeals has utterly failed to show that the alleged obligations of Celino are supported by the proof. It could not rely solely on the bare allegation of Bautista that the three checks were given to him in payment of Celino's debts because that is the very issue which required proof. It could not rely on the inference that might be drawn from the delivery of the checks of Bautista, because all the other checks involved in the complaint in this case had been delivered to Bautista, and if the latter was not held liable for said other checks, it was not because of the presumption *juris tantum* "that a negotiable instrument was given or indorsed for a sufficient consideration," but because there were liquidation vouchers signed by Celino. Neither could the Court of Appeals invoke the rule that the "plaintiff must rely on the strength of his own and not upon the weakness of the defendant's evidence," since, as Mr. Justice Ozaeta correctly held, "it was incumbent upon the respondent Bautista to prove that he had paid to Celino the amounts of said checks, or that he had the right to keep them."

To justify the reversal of the judgment of the trial court, the Court of Appeals should have at least exerted itself in refuting the following factual considerations taken into account by the trial court: (1) Whereas in the case of the other controverted checks, there were corresponding liquidation vouchers (in addition to cash vouchers) signed by Celino, in the case of the checks (Exhibits G, H and I) similar liquidation vouchers are conspicuous by their absence. (2) Bautista is incredible as a witness, in view of his repeated convictions for illegal importation of opium, illegal possession of lottery tickets, and bribery. (3) There is no documentary evidence of the alleged debts of Celino, in spite of the big amounts involved. (4) If Celino needed money, he would have secured it from Spencer Kellog & Sons, Inc., as Celino was the company's copra purchaser.

The Court of Appeals wasted time and space when, in the decision now the subject of review, it dwelt at length upon the cash vouchers covering the checks (Exhibits G, H and I) and upon the testimony of Jose Sison to the effect that Celino signed said cash vouchers, because that fact had already been admitted when the Court of Ap-

peals reserved to Celino the right to bring an action for accounting, and when the Supreme Court directed the Court of Appeals to verify whether the alleged obligations of Celino are supported by the proof. In other words, the signing by Celino of said cash vouchers had previously been held, in effect, as failing to *ipso facto* wipe out Bautista's liability for the value of the three checks.

This is not a situation in which the Court of Appeals has simply made an erroneous finding of fact which is beyond review in an appeal by certiorari, but it is a case in which said court has laid down a factual conclusion virtually unsupported by any evidence. In my opinion, in view of the circumstances of the case, this Court should give due course to the present petition for certiorari.

OZAETA, *J.:*

I concur in this dissent.

PABLO, *M.:*

Concurro con esta disidencia.

PERFECTO, *J.:*

We agree with this opinion.

BRIONES, *J.:*

I strongly adhere to this solid and elaborate dissenting opinion. There being at least four members of this Court who firmly believe that there are in this case substantial merits for review, the traditional practice should be followed by giving due course to the appeal.

Petition denied, in accordance with section 2, Rule 56, of the Rules of Court.

[No. L-1805. January 31, 1949]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* BENJAMIN ALBANO, defendant and appellant.

CRIMINAL LAW; TREASON WITH PHYSICAL INJURIES AND MURDER; MEMBERS OF POLICE FORCE DURING OCCUPATION WHO TORTURED THEIR OWN COUNTRYMEN.—Possibly, under certain circumstances, members of the police force during the occupation who merely urged guerrillas to keep the peace and to stop their activities did not commit treason; but when it is shown by positive evidence that said officers were not content to render lip service to the enemy in making pleas for public order, but went further and tortured their own countrymen who were guerrillas or guerrilla sympathizers, a verdict of guilt must inevitably be returned.

APPEAL from a judgment of the People's Court.

The facts are stated in the opinion of the court.

Felix P. Wijangco for appellant.

Assistant Solicitor General Ruperto Kapunan, Jr., and *Solicitor Ramon L. Avanceña* for appellee.

BENGZON, *J.:*

For having aided the Japanese invaders, torturing some guerrillas and even causing the death of one of them, the appellant Benjamin Albano was sentenced by the People's Court to suffer life imprisonment and to pay a fine of ₱10,000 and the costs.

There is enough evidence, in accordance with the two-witness rule in treason cases that:

In the night of August 8, 1943, Castillo M. Tidang, a young intelligence officer of the guerrillas under Colonels Nakar and C. A. Thorpe assigned to the Province of Nueva Vizcaya was arrested in the house of Martin Felipe in Cayapa Proper, Nueva Vizcaya, by four Filipinos, armed with two rifles (among them Ruperto Basig and Antonio of Aritao) who brought him to the Japanese headquarters one kilometer away. After a fruitless investigation of his guerrilla activities, and physical ill-treatment on account thereof by Lieutenant Orimoto and Sergeant Marikawa, who informed him incidentally that they knew he was a guerrilla through a report of Benjamin Albano, Tidang was conducted by Sergeant Marikawa and the two Filipino retainers above-mentioned to the quarters of Captain Saito, a Japanese, about two kilometers farther, in barrio Alupat in the house of Pedro Medina. There Castillo Tidang was entrusted to the custody of the accused Benjamin Albano, a Filipino citizen, at that time a sergeant in the Bureau of Constabulary of the puppet government.

The next day the accused directed his men (around 12 soldiers) to order the people of the locality to gather near Medina's house, and there he addressed them more or less as follows:

"You people of Cayapa, we called you to let you know that we have a new government now—the Japanese government and we ought to recognize their authority. And second, is that many of you people here are collaborating with the guerrillas and many of you are guerrillas here and there are seven Americans staying in these barrios and you have been supporting them."

Immediately thereafter he produced a list of those suspected of being guerrillas, and reading from it, he named Castillo Tidang, Balolong Tidang, Waket Gomoy, Pedro Medina, Martinez Cuyangan, Ligmayo Bugnay, Jose Bugnay and many others. Then he announced that the women and children may go home, but the men must remain. Presently he called Castillo Tidang and asked the latter whether he was a guerrilla under Major Lapham and Major Enriquez. Tidang said he was not. Albano insisted he was, and called other persons (Jose Felipe and Feliciano Fely) for corroboration. Captain Saito wanted to stop the investigation, but Albano said "no, Castillo Tidang is number one in the list," tied the latter up and led him to the brook about twenty meters from the place. There he forcibly submerged the captive's head under water many

times and otherwise manhandled him to extract admission of his underground activities. All to no avail: Tidang kept his secret though he was tortured to unconsciousness.

Next Albano took Waket Gomoy to the same brook and examined the latter about his guerrilla work and the help he had extended to Americans. Naturally, Gomoy denied all connection with the resistance movement. Because of such denial the accused applied to Gomoy the same treatment he had administered to Tidang, this time with fatal consequences, because Gomoy died, and had to be buried that same day by Martin Felipe and others.

Another victim of the appellant was Pedro Medina who suffered in identical fashion, for insisting he had no understanding with the underground forces nor with the Americans.

On that same occasion and in connection with his investigation Albano boxed and kicked Balolong Tidang, caned and manhandled Ligmayo Bugnay and whipped Martinez Cuyangan for denying there were arms and guerrilleros in Alupat.

Resuming the inquiry the following day, Albano hung Balolong Tidang from the beam of a hut and singed his back with a "burning fire" leaving therein scars which were shown to the judges. He also hanged Celino Vergara upside down; and, anxious to extract from him information about guerrillas and Americans, inserted a reed in his private parts causing him intense pain and suffering. Vergara, like the others, refused to squeal.

The foregoing treasonable acts have all been testified to by not less than two persons. The brief of the Solicitor General has indicated the pages of the transcript of the stenographic notes concerning each point. These have been checked. They are substantially in accordance with the findings of the First Division of the People's Court. Such findings counsel for appellant impliedly admits; but he contends that the evidence for the prosecution failed to establish adherence to the enemy and the rendering of aid and comfort to it. The contention is without merit, because the words and deeds of appellant clearly exhibit such adherence and assistance to the foe. Possibly, under certain circumstances, members of the police force during the occupation who merely urged guerrillas to keep the peace and to stop their activities did not commit treason; but when it is shown by positive evidence that said officers were not content to render lip service to the enemy in making pleas for public order, but went further and tortured their own countrymen who were guerrillas or guerrilla sympathizers, a verdict of guilt must inevitably be returned.

In this connection appellant, pretended he had been sent to Alupat by one Captain Casupang of the Isabela Guer-

rillas to help the inhabitants and that he had actually saved some people from further punishment at the hands of the Japanese. But the lower court discounted his story, and rightly we believe, because of the dubious nature of his supporting testimonial and documentary evidence and principally, because of this significant detail: of the more than four hundred people who observed his conduct in Alupat not a single person was presented in his favor, at least to substantiate the benefits he allegedly bestowed on some of them. And yet even if he had succeeded in proving the good deeds he claims he had performed on that occasion, he would still be criminally liable for the pains he inflicted upon fellow-citizens and the death of the unfortunate Gomoy. (People *vs* Victoria, 44 Off. Gaz., 2230.)

Contrary to appellant's contention, we find that his case does not come within the purview of President Roxas' amnesty proclamation of January 28, 1948, because his is a crime against persons committed for the purpose of aiding the Japanese.

The offense is treason with physical injuries and murder. Following precedents in appeals of similar character, the Court votes to affirm the penalty imposed in the decision herein reviewed.

Moran, C. J., Parás, Pablo, Perfecto, Briones, Tuason, and *Montemayor, JJ.,* concur.

I certify that Mr. Justice Feria voted for the affirmance of the decision appealed from.—MORAN, *C. J.*

Judgment affirmed.

[No. L-2007. January 31, 1949]

WILLIAM CHIONGBIAN, petitioner, *vs.* ALFREDO DE LEON, in his capacity as Commissioner of Customs, JOSE GALLOFIN, in his capacity as Collector of Customs of the Port of Cebu, and VICENTE DE LA CRUZ, in his capacity as General Manager of the Philippine Shipping Administration, respondents; PHILIPPINE SHIPOWNERS' ASSOCIATION, intervenor.

1. CONSTITUTIONAL LAW; CITIZENSHIP; HOLDING PUBLIC OFFICE THROUGH ELECTION BEFORE ADOPTION OF THE CONSTITUTION; LEGITIMATE MINOR CHILD.—Upon the adoption of the Constitution, V. C., father of herein petitioner, having been elected to a public office in the Philippines before the adoption of the Constitution, became a Filipino citizen by virtue of Article IV, section 1, subsection 2 of the Constitution. W. C., the herein petitioner, who was then a minor, also became a Filipino by reason of subsection 3 (Article IV) of the Constitution, his father having become a Filipino citizen upon the adoption of said Constitution. This is also in conformity with the settled rule in our jurisprudence that a legitimate minor child follows the citizenship of his father.

2. ID.; ID.; INTENTION OF FRAMERS OF THE CONSTITUTION; NO PROVISION THEREIN WAS INTENDED ONLY FOR BENEFIT OF ONE PERSON.—The members of the Constitutional Convention could not have dedicated a provision of our Constitution merely for the benefit of one person without considering that it could also affect others. When they adopted subsection 2, they permitted, if not willed, that said provision should function to the full extent of its substance and its terms, not by itself alone, but in conjunction with all other provisions of that great document. They adopted said provision fully cognizant of the transmissive essence of citizenship as provided in subsection 3. Had it been their intention to curtail the transmission of citizenship in such a particular case, they would have so clearly stated.

3. ID.; ID.; DELETIONS IN THE PRELIMINARY DRAFTS OF THE CONVENTION, EFFECT OF.—Deletions in the preliminary drafts of the Convention are, at best, negative guides, which cannot prevail over the positive provisions of the finally adopted Constitution.

4. CONTRACT OF SALE; HONEST ERROR COMMITTED IS NOT MISREPRESENTATION; CASE AT BAR.—Respondent's allegation that the petitioner violated the contract of sale with the Philippine Shipping Administration on the ground of misrepresentation, petitioner having alleged in said contract that his father was a naturalized Filipino, is without merit. *Held*: That such was not a deliberate misrepresentation but an error which any person not versed in the law is prone to commit. It is clear that petitioner merely meant that his father was a Filipino citizen by operation of law and not by birth.

ORIGINAL ACTION in the Supreme Court. Prohibition.

The facts are stated in the opinion of the court.

Tañada, Pelaez & Teehankee, Pendatum, Arches & Sayo, and *De Santos, Herrera & Delfino* for petitioner.

First Assistant Solicitor General Roberto A. Gianzon and *Solicitor Lucas Lacson* for respondents.

Roxas, Picazo & Mejia for intervenor.

Mariano Jesus Cuenco, Miguel Cuenco and *Nicolas Belmonte* as *amici curiae.*

MORAN, *C. J.:*

This is a petition seeking to permanently prohibit respondent Customs officials from cancelling the registration certificates of petitioner's vessels, and respondent Philippine Shipping Administration from rescinding the sale of three vessels to petitioner. The primary basis for respondents' and intervenor's acts is the allegation that petitioner is not a Filipino citizen and therefore not qualified by law to operate and own vessels of Philippine registry. The Philippine Shipping Administration also alleges that petitioner violated the contract of sale of three vessels executed between them, on the ground of misrepresentation, petitioner having alleged in said contract that his father was a naturalized Filipino citizen. The Philippine Shipowners' Association was later allowed to intervene and it filed its answer against the petitioner.

The entire case hinges on whether or not petitioner William Chiongbian is a Filipino citizen, and this Court holds that he is one.

Article IV of the Constitution provides:

"SECTION 1. The following are citizens of the Philippines:

"(1) Those who are citizens of the Philippine Islands at the time of the adoption of this Constitution.

"(2) Those born in the Philippine Islands of foreign parents who, before the adoption of this Constitution, had been elected to public office in the Philippine Islands.

"(3) Those whose fathers are citizens of the Philippines.

"(4) Those whose mothers are citizens of the Philippines and, upon reaching the age of majority, elect Philippine citizenship.

"(5) Those who are naturalized in accordance with law.

"SEC. 2. Philippine citizenship may be lost or reacquired in the manner provided by law."

In 1925, Victoriano Chiongbian, a Chinese citizen and father of the herein petitioner William Chiongbian, was elected to and held the office of muncipal councilor of the twon of Plaridel, Misamis Occidental. This fas is sufficiently established by the evidence submitted to this Court; by the findings of the National Bureau of Investigation cited in Opinion No. 27, s. 1948, of the Secretary of Justice; and as admitted by respondents in their pleadings. It is also shown and admitted that at the time of the adoption of the Constitution, petitioner William Chiongbian was still a minor.

It is conclusive that upon the adoption of the Constitution, Victoriano Chiongbian, father of herein petitioner, having been elected to a public office in the Philippines before the adoption of the Constitution, became a Filipino citizen by virtue of Article IV, section 1, subsection 2 of the Constitution. William Chiongbian, the herein petitioner, who was then a minor, also became a Filipino citizen by reason of subsection 3 (Article IV) of the Constitution, his father having become a Filipino citizen upon the adoption of said Constitution. This is also in conformity with the settled rule of our jurisprudence that a legitimate minor child follows the citizenship of his father.

It is argued by respondents that this privilege of citizenship granted by subsection 2 (Article IV, Constitution) is strictly personal and does not extend to the children of the grantee. In support of this contention they offer two principal arguments. Firstly, that this subsection was adopted by the Constitutional Convention merely to grant Filipino citizenship to Delegate Caram and thus obviate the possibility of a non-Filipino signing the Constitution as one of its framers. Secondly, it is argued that the original draft of said subsection 2 contained the phrase—"and their descendants,"—which was deleted from the final draft, thus showing that this privilege of citizenship was intended to be strictly personal to the one who had been elected to a public office and did not extend to his descendants.

With regard to the first argument, it may be said that the members of the Constitutional Convention could not have dedicated a provision of our Constitution merely for the benefit of one person without considering that it could also affect others. When they adopted subsection 2, they permitted, if not willed, that said provision should function to the full extent of its substance and its terms, not by itself alone, but in conjunction with all other provisions of that great document. They adopted said provision fully cognizant of the transmissive essence of citizenship as provided in subsection 3. Had it been their intention to curtail the transmission of citizenship in such a particular case, they would have so clearly stated.

The second argument of respondents is similarly untenable. The mere deletion of the phrase—"and their descendants,"—is not determinative of any conclusion. It could have been done because the learned framers of our Constitution considered it superfluous, knowing full well that the meaning of such a phrase was adequately covered by subsection 3. Deletions in the preliminary drafts of the Convention are, at best, negative guides, which cannot prevail over the positive provisions of the finally adopted Constitution.

Respondents' allegation that the petitioner violated the contract of sale with the Philippine Shipping Administration on the ground of misrepresentation, petitioner having alleged in said contract that his father was a naturalized Filipino, is without merit. Such was not a deliberate misrepresentation but an error which any person not versed in the law is prone to commit. It is clear that petitioner merely meant that his father was a Filipino citizen by operation of law and not by birth.

In view of all the foregoing, the petition for the issuance of the writ of prohibition is hereby granted and respondent Customs officials are hereby enjoined from cancelling the registration certificates of petitioner's vessels and respondent Philippine Shipping Administration is hereby enjoined from rescinding the sale of the three vessels made to petitioner. No costs. It is so ordered.

Parás, Pablo, Perfecto, Bengzon, Briones, Tuason, and *Montemayor, JJ.,* concur.

I certify that Mr. Justice Feria voted for the issuance of the writ.—MORAN, *C. J.*

Writ granted.

[No. L–2676. January 31, 1949]

LI KIM THO, petitioner, *vs.* CONRADO S. SANCHEZ, Judge of First Instance of Manila, Branch VII, and GO SIU KAO, respondents.

1. CERTIORARI; LITIGATIONS MUST END AND TERMINATE; DUTIES OF COURTS.—Litigation must end and terminate sometime and somewhere, and it is essential to an effective and efficient admin-

istration of justice that once a judgment has become final, the winning party be not, through a mere subterfuge, deprived of the fruits of the verdict. Courts must therefore guard against any scheme calculated to bring about that result. Constituted as they are to put an end to controversies, courts should frown upon any attempt to prolong them.

2. ID.; EXECUTION, STAY OF; WHEN MAY BE AUTHORIZED.—A stay of execution may be authorized when necessary to accomplish the ends of justice, but not when its object is to set at naught a final judgment and make a mockery of the administration of justice.

ORIGINAL ACTION in the Supreme Court. Certiorari.

The facts are stated in the opinion of the court.

Jose P. Laurel Iturralde & Tuazon for petitioner.

Vicente J. Francisco & Estanislao A. Fernandez, Jr. for respondents.

REYES, *J.:*

This is a petition for certiorari to review an order issued by the Court of First Instance of Manila to stay the execution of a judgment of the same court which had already become final, the petition alleging that the said court exceeded its jurisdiction and committed a grave abuse of discretion in issuing the said order.

There is no controversy as to the facts. The petitioner Li Kim Tho, lessee of a building administered by Fernandez Hermanos, Inc., sublet the ground floor of said building to the respondent Go Siu Kao, who, during the Japanese occupation, had been deprived of his own house by the military. Needing the entire building for himself after liberation, the petitioner required the said respondent to vacate the portion sublet to him, and the demand having been refused, he brought suit in the Municipal Court of Manila to have him ejected from the premises. Judgment was rendered in favor of petitioner; but respondent appealed to the Court of First Instance and, having again lost in that court, took an appeal to the Court of Appeals. After an adverse judgment in that court, he took the case to the Supreme Court, but met with failure when his petition for certiorari was dismissed. Undaunted, respondent sought to prevent his ouster when the case was remanded to the Court of First Instance for execution. As a means to that end, he then filed an action to have himself declared as the direct lessee of the premises in question by virtue of an alleged contract with Fernandez Hermanos, with a petition for a writ of preliminary injunction to suspend the execution of the decision of the Court of Appeals in so far as his ouster was concerned. Defendants in said action are Li Kim Tho, the Sheriff of Manila, and Fernandez Hermanos, Inc. The preliminary injunction was granted but was, upon a motion for reconsideration, lifted, with the result that the respondent

was ejected from the premises by the sheriff of Manila. Upon a motion for reconsideration, however, filed by said respondent, the same court, now acting through another judge, issued a writ of mandatory injunction to restore him in the possession of the premises, thereby putting into effect again the writ of preliminary injunction which another judge had ordered lifted. That writ of mandatory injunction is now the subject matter of the present petition for certiorari.

To complete the narration of facts, it should be stated that while the detainer case was in the Court of Appeals, the respondent Go Siu Kao filed a motion for a new trial on the ground that he had already entered into a contract with Fernandez Hermanos, making him the lessee of the ground floor of the building in question. Passing upon said motion, the Court of Appeals, in the very decision which affirmed the judgment of the Court of First Instance, declared the motion to be without merit, holding that, as long as the lease to the petitioner subsisted, he was the one that had control over the sublease to the respondent, so that any action or attitude taken by Fernandez Hermanos, Inc., on the continuation of the sublease had no bearing on the result of the case.

Litigation must end and terminate sometime and somewhere, and it is essential to an effective and efficient administration of justice that once a judgment has become final, the winning party be not, through a mere subterfuge, deprived of the fruits of the verdict. Courts must therefore guard against any scheme calculated to bring about that result. Constituted as they are to put an end to controversies, courts should frown upon any attempt to prolong them.

It is, of course, settled that the stay of execution of a final judgment may be authorized whenever it is necessary to accomplish the ends of justice as, for instance, where there has been a change in the situation of the parties which makes such execution inequitable. But we are persuaded that such is not the case here. The filing by respondent Go Siu Kao of a new action to litigate again his right to continue in the possession of the premises in controversy as an alleged basis for suspending the execution of a final judgment which denies him such right, savours of a mere scheme to delay or frustrate the execution of the judgment in question. Obvious is the fact that the issue raised in the new case is something that has already been passed upon by the Court of Appeals in connection with the denial of respondent's motion for new trial based on an alleged contract of lease between him and Fernandez Hermanos. And it is significant that, while respondent claims that such a lease in his favor has been entered into, nowhere does it appear that Fernandez

Hermanos has given notice to the petitioner Li Kim Tho of its decision to terminate the lease in favor of the latter or made any demand for him to vacate the premises. As the lease to Li Kim Tho is from month to month and the lessee has not given up the lease, tacit renewal thereof must be presumed until the lessor gives proper notice to terminate it.

It is, therefore, our opinion that the respondent judge was not justified in issuing the writ of mandatory injunction which, if carried out, would set at naught a final verdict rendered by our courts, from the lowest to the highest, and make a mockery of the administration of justice. The issuing of said writ constitutes that abuse of discretion which is correctable by certiorari.

Wherefore, the order complained of is revoked and the preliminary injunction heretofore issued by this Court to restrain the enforcement of said order is made permanent, with costs against the respondent Go Siu Kao.

Moran, C. J., Parás, Pablo, Perfecto, Bengzon, Briones, and *Tuason, JJ.*, concur.

I hereby certify that Mr. Justice Feria voted to revoke the order complained of and to make the preliminary injunction, heretofore issued, permanent.—MORAN, *C. J.*

Order complained of revoked and preliminary injunction heretofore issued made permanent.

[R-CA-No. 9871. Enero 31, 1949]

ANTONIO AUSTRIA, demandante y apelado, *contra* JOSÉ E. LAUREL y ALFREDO LAUREL, demandados. JOSÉ E. LAUREL, apelante.

1. PARTICIÓN DE BIENES INMUEBLES; LEY DE PRESCRIPCIÓN; TÍTULO POR PRESCRIPCIÓN ADQUISITIVA.—Se ve claramente que el demandado ha reclamado dominio exclusivo sobre el solar de una manera abierta, pública, continua y adversa contra todo el mundo, por medio de su tutor cuando era aún menor de edad y personalmente desde 1921 cuando fué liberado de la tutela. Y aunque no se considerase más que la posesión ejercida personalmente por el demandado desde 1921 en que por orden judicial se ha hecho cargo de sus bienes entre los cuales está el solar en litigio hasta el 12 de Octubre de 1939 en que se presentó la demanda en esta causa, ya han transcurrido 17 años.
2. ID.; ID.; ID.—El artículo 41 del Código de Procedimiento Civil dispone que: "Diez años de posesión adversa por parte de cualquier persona que pretendiere ser dueña durante ese tiempo de un terreno, o de un derecho sobre él, que por dicho período haya continuado sin interrupción, por ocupación, herencia, concesión, o de otra suerte, sea cuál fuere el modo cómo comenzó dicha ocupación, investirá al ocupante actual o poseedor de dicho terreno de título perfecto, salvando a las personas incapacitadas los derechos que les da el artículo que sigue. Para que la prescripción o la posesión adversa constituyan título, la posesión por parte del reclamante o de la persona en cuyo nombre o por cuyo medio se hace la reclamación, debe haber sido real,

abierta, pública, continua, con exclusión de cualquier otro derecho y adversa para todos los otros reclamantes."

APELACIÓN contra una decisión del Juzgado de Primera Instancia de Batangas. De la Rosa, J.

Los hechos aparecen relacionados en la decisión del Tribunal.

D. Tomás P. Panganiban en representación del apelante.
D. Francisco P. de Guzmán en representación del apelado.

PABLO, *M.:*

Se pide por el demandante la partición de un solar situado en el municipio de Talisay, provincia de Batangas, de 4,360 metros cuadrados. El demandado alega como defensa la prescripción adquisitiva.

El solar era originariamente de Teodoro Laurel; que éste tuvo siete hijos llamados Felipa, Januario, Emiteria, Juana, Bárbara, Arcadio y Romualdo. José E. Laurel, el demandado, es hijo de Romualdo y Antonio Austria, el demandante, es nieto de Juana Laurel. Los bienes del finado Teodoro han sido repartidos entre sus siete hijos y el solar en cuestión ha sido asignado a Juana y Romualdo en mancomún; que Juana, abuela del demandante, dejó de ocupar la porción noroeste del terreno desde la erupción del volcán de Taal en 1911 porque se derrumbó su casa. A la muerte de Romualdo, las porciones antiguamente ocupadas por Romualdo y Juana fueron ocupadas por Victoriano Pamplona y Bárbara Laurel, porque Victoriano fué nombrado tutor de la persona y bienes del menor José E. Laurel, y según inventario presentado en el expediente, el solar hoy en litigio era uno de los terrenos que pertenecían al menor, y en 1921 cuando fué liberado de la tutela por haber cumplido ya sus 21 años, José E. Laurel lo recibió, por orden judicial, de su tutor.

Si Victoriano y Bárbara ocuparon el solar a la muerte de Romualdo no fué ciertamente porque lo reclamaban para su beneficio personal, sino por ser Victoriano Pamplona tutor y Bárbara tía del menor. Y en un pueblo pequeño no puede ser un secreto este hecho: era de conocimiento general especialmente entre los parientes. Así, Alfredo Laurel que es uno de los tíos del demandante, declarando en la vista de esta causa, declaró:

"Juzgado:

"P. Y por qué compró usted este terreno que ocupa su casa, de su co-demandado José E. Laurel?—R. Yo compré ese terreno porque yo sé que es de la legítima propiedad de José E. Laurel."

Antes aún de llegar a su mayor de edad, el demandado estuvo plantando árboles frutales en el solar y construyó una casa en él. Cuando Apolonio Malabanan, testigo principal del demandante, transmitió la reclamación de éste de que es condueño del solar, el demandado le contestó que

él,—José E. Laurel,—era el único y exclusivo propietario. Desde esa declaración categórica del demandado de que no reconocía la reclamación de condueño del demandante, ha nacido ya la acción de éste para pedir judicialmente la partición y desde ese momento también comenzó a favor del demandado la prescripción adquisitiva. Sin embargo, el demandante no ha hecho nada y sólo presentó su demanda en 12 de Octubre de 1939. De todo esto se ve claramente que el demandado ha reclamado dominio exclusivo sobre el solar de una manera abierta, pública, continua y adversa contra todo el mundo, por medio de su tutor cuando era aun menor de edad y personalmente desde 1921 cuando fué liberado de la tutela. Y aunque no se considerase más que la posesión ejercida personalmente por el demandado desde 1921 en que por orden judicial se ha hecho cargo de sus bienes entre los cuales está el solar en litigio hasta el 12 de Octubre de 1939 en que se presentó la demanda en esta causa, ya han transcurrido 17 años.

El artículo 41 del Código de Procedimiento Civil dispone que: "Diez años de posesión adversa por parte de cualquier persona que pretendiere ser dueña durante ese tiempo de un terreno, o de un derecho sobre él, que por dicho período haya continuado sin interrupción, por ocupación, herencia, concesión, o de otra suerte, sea cuál fuere el modo cómo comenzó dicha ocupación, investirá al ocupante actual o poseedor de dicho terreno de título perfecto, salvando a las personas incapacitadas los derechos que les da el artículo que sigue. Para que la prescripción o la posesión adversa constituyan título, la posesión por parte del reclamante o de la persona en cuyo nombre o por cuyo medio se hace la reclamación, debe haber sido real, abierta, pública, continua, con exclusión de cualquier otro derecho y adversa para todos los otros reclamantes."

Aplicando esta disposición legal, este Tribunal, en Ramos *contra* Ramos, 45 Jur. Fil., 379, dijo:

"Es indudablemente un principio general de jurisprudencia reconocido en el artículo 1965 del Código Civil, que la prescripción con arreglo al derecho civil no puede ordinariamente tener lugar mediante mera posesión por un coheredero o condueño en contra de su coheredero o condueño; y el mismo concepto ha sido plenamente reconocido por el derecho consuetudinario. La razón de esto es que la posesión por un coheredero o condueño de ordinario redunda en beneficio de los otros. Su posesión no es, por tanto, adversa. Pero cuando el ocupante deja de poseer en concepto de coheredero o condueño, y posee o pretende poseer en virtud de cualquier otro derecho o título, la prescripción tiene lugar en el mismo grado y medida que en los demás casos." (De Castro *contra* Echarri, 20 Jur. Fil., 23; Bargayo *contra* Camúmot, 40 Jur. Fil., 902).

Y en Casañas *contra* Roselló, 50 Jur. Fil., 101; este Tribunal reiteró la misma doctrina, diciendo:

"La pretensión de la apelante sobre que no se puede invocar entre coherederos la doctrina de prescripción en que se funda la demandada, es generalmente cierta. (Aliasas *contra* Alcántara, 16 Jur. Fil., 489;

Cabello *contra* Cabello, 37 Jur. Fil., 343; Bargayo *contra* Camúmot, 40 Jur. Fil., 902.) Con todo, cuando un heredero ocupa abierta y adversamente bienes, en contra de sus coherederos, por un largo período de tiempo, se le permite, en derecho, que interponga la defensa de prescripción. (De Castro *contra* Echarri, 20 Jur. Fil., 23; Cortés *contra* Oliva, 33 Jur. Fil., 512; Dimagibá *contra* Dimagibá, 34 Jur. Fil., 380; De los Santos *contra* Santa Teresa, 44 Jur. Fil., 856; Ramos *contra* Ramos, 45 Jur. Fil., 379)."

Con revocación de la sentencia apelada, se ordena el sobreseimiento de la demanda con costas contra el apelado.

Moran, Pres., Parás, Feria, Perfecto, Bengzon, Briones, y *Tuazon, MM.,* están conformes.

Se revoca la sentencia.

[No. L-1393. Febrero 1, 1949]

EL PUEBLO DE FILIPINAS, querellante y apelado, *contra* RAFAELA GIRON Y GATDULA Y OTROS, acusados. TOMÁS CANLAS Y GARCÍA, apelante.

1. DERECHO PENAL; ASESINATO; COAUTOR POR INDUCCIÓN.—El apelante es coautor, por inducción, del delito realizado por J. E. Se consideran autores a los que fuerzan o inducen directamente a otros a ejecutarlo.
2. APELACIONES; CUESTIÓN DE PRUEBAS QUE NO FUÉ OBJETADA EN TIEMPO OPORTUNO EN EL JUZGADO INFERIOR.—No se puede suscitar por primera vez en esta jurisdicción la cuestión de la inadmisibilidad de la declaración del testigo porque no fué objetada en tiempo oportuno en el Juzgado inferior.
3. DERECHO PENAL; PRUEBAS; TESTIGO; FALTA DE CORROBORACIÓN.—La falta de corroboración afecta tan sólo al crédito que merece el testigo y de ninguna manera a la competencia de éste, y si su declaración satisface a la Corte en cuanto a la culpabilidad del acusado, fuera de duda racional, la misma es suficiente.

APELACIÓN contra una sentencia del Juzgado de Primera Instancia de Manila. Peña, J.

Los hechos aparecen relacionados en la decisión del Tribunal.

D. Carlos Perfecto en representación del apelante.

El Procurador General Auxiliar Manuel P. Barcelona y *el Procurador Sr. Jesús A. Avanceña* en representación del Gobierno.

PABLO, *M.:*

Fueron acusados Rafaela Giron, Tomás Canlas, José Estrada y Simplicio Ragasajo del asesinato de Patrocinio San Agustín. José Estrada, al ser informado de la querella, se declaró culpable, y fué condenado a reclusión perpetua con las accesorias y parte proporcional de las costas. Rafaela Giron y Tomás Canlas, después de la vista correspondiente, fueron condenados a reclusión perpetua con las accesorias, a indemnizar mancomunada y

solidariamente a los herederos de Patrocinio San Agustín en la suma de ₱2,000, y pagar cada uno una cuarta parte de las costas. Se sobreseyó la querella en cuanto a Simplicio Ragasajo, porque no se ha probado que haya tenido participación en la comisión del delito. Rafaela Giron está sirviendo la condena impuesta a ella y Tomás Canlas apeló.

Los hechos debidamente probados son los siguientes:

El 16 de Junio de 1946, Tomás Canlas informó a José Estrada que su anterior amiga Rafaela Giron era cruelmente maltratada por su querido Patrocinio San Agustín, un policía de la Ciudad de Rizal, porque no daba a éste todo el dinero que pedía y porque no se conformaba ella con su deseo de registrar el *jeep* a su nombre; informó a José Estrada que le pagaría Rafaela Giron la cantidad de ₱20,000 si él se conformaba en matar a Patrocinio San Agustín. Estrada dijo que lo pensaría primero y se retiró a su casa. Canlas le siguió y reiteró su proposición. Como no obtenía una resolución definitiva, le invitó a la casa de Rafaela para verse con ella; como ésta no estaba, fueron a una casa de juego en Pasay y allí la encontraron. Canlas habló con ella. Después, Canlas y Estrada fueron a la casa de Rafaela en la Avenida Taft, y como no llegaba como prometió, Canlas fué a llamarla de la casa de juego. Estrada les esperó. A su llegada, Rafaela dió cuenta de los maltratos que recibía de su querido; que ya no podía aguantarlos y que además quería transferir a su nombre sus propiedades. Preguntó si estaba dispuesto José Estrada a matar a San Agustín, que le compensaría con ₱20,000; que era necesario matarle antes del 19 para que no pueda registrar a su nombre el *jeep* y que después de muerto San Agustín, ella vendería su casa para darle a Estrada su gratificación. Aceptada la proposición por José Estrada, les dijo a los dos que volviesen al anochecer y que ella indicaría la forma cómo se realizaría el fin convenido. Mientras Rafaela hacía esta proposición a Estrada, Canlas terciaba animándole; le convencía que aceptase la proposición; que no le pasaría nada; que Rafaela y él se encargarían de cuidarle.

A eso de las seis del mismo día, Canlas y Estrada fueron a la casa de Rafaela, pero como no estaba allí, fueron a la casa de juego, y como San Agustín iba también en busca de Rafaela, Tomás Canlas y José Estrada fueron a una casa en la Avenida Taft, que está al lado de la de ella para esperarla. Rafaela y San Agustín llegaron más tarde, procedentes de la casa de juego. A eso de las 10:00 poco más o menos, Rafaela bajó de su casa. Entonces Canlas y Estrada se vieron con ella. Rafaela dijo a José Estrada que su querido San Agustín estaba dormido ya; que su revólver cargado estaba sobre la mesa en su cuarto; que la puerta no estaba trancada; que Estrada podía entrar empujándola solamente; que al

entrar en la casa, vería al lado izquierdo la puerta del cuarto donde está dormido San Agustín. Convinieron en que después de dejar pasar algún tiempo lo suficiente para que ella pudiese volver arriba y simular estar dormida, Estrada subiría para disparar el tiro contra San Agustín. Efectivamente, después de algún tiempo, Estrada se introdujo en el cuarto y con el revólver de calibre .45 que sacó de la mesa disparó a San Agustín que estaba dormido en la cama a una distancia de unos dos metros. Disparado el tiro fatal, Estrada fué a la casa de Canlas para darle cuenta de que había cumplido ya con el convenio. Canlas le aseguró que Rafaela y él se cuidarían de él. San Agustín fué llevado al Hospital General en donde expiró al siguiente día a consecuencia de la herida causada por el proyectil del revólver. Según el Dr. Mariano V. Lara que verificó la autopsia del cadáver, el proyectil entró por el lado izquierdo, e interesando el hipocondrio izquierdo, el colon, bazo, diafragma, pancreas y pulmón parte inferior, salió por la espalda, punto medio.

De los hechos probados se desprende claramente que hubo un acuerdo entre Rafaela Giron, Tomás Canlas y José Estrada para matar a San Agustín. Y aunque Tomás Canlas no ha tomado parte directa en el disparo del revólver tuvo, sin embargo, participación al ayudar a Rafaela en convencer repetidas veces a José Estrada a matar a San Agustín. Por tanto, él, es coautor, por inducción, del delito realizado por José Estrada. Se consideran autores a los que fuerzan o inducen directamente a otros a ejecutarlo. (Artículo 17, Código Penal Revisado).

Después de citar numerosas decisiones de este Tribunal y del Tribunal Supremo de España, en Estados Unidos *contra* Indanan (24 Jur. Fil., 209), se dijo:

"De las jurisprudencias antes citadas y principios por las mismas establecidos como los que deben regir en cuanto a determinar si los actos del acusado constituyen o no inducción con arreglo a la ley, puede afirmarse, como proposición general, que cuando la inducción hecha por el acusado es de tal índole y realizada en tal forma, que se convierte en causa eficiente del delito, y tal inducción se hizo con la intención de lograr tal resultado, en este caso el acusado es culpable de inducción del delito cometido por la persona así inducida."

Tomás Canlas, como defensa, alega que el 15 de Junio de 1946, había encontrado a Rafaela Giron cuando iba al mercado, y le dijo que necesitaba un chófer porque ya se había marchado el suyo. En la noche de aquel día encontró a José Estrada y le preguntó si quería ser chófer. Como éste contestase que sí, le llevó a la casa de Rafaela Giron al siguiente día 16 a eso de las 11:00. Y mientras conversaban Rafaela y José, él se marchó. Que en la noche del 16 de Junio, José Estrada fué a su casa pidiéndole que le acompañase a la casa de Rafaela. En efecto, le acompañó y después se marchó. En la mañana del siguiente

día, esto es, el 17, recibió una carta de su cuñada que estaba en Dinalupihan y a las 11:00 de la misma mañana cogió un *bus* en la calle Azcárraga para Dinalupihan llegando a este pueblo a las 4:00 de la tarde. Estuvo en este municipio desde el 17 hasta el 21 de Junio en que volvió a Manila en donde fué arrestado para responder del delito. En realidad, no hay incompatibilidad entre la ida de Canlas con Estrada a la casa de Rafaela en la noche del crimen y su viaje a Bataan. Son dos actos ocurridos uno después de otro. La declaración del acusado Tomás Canlas confirma la de José Estrada en cuanto a la entrevista que tuvo José Estrada con Rafaela en la casa de ésta en la noche del crimen, ocasión en que Rafaela comunicó los detalles cómo José Estrada tenía que matar a San Agustín.

Para explicar Canlas por qué acompañó por la noche a José Estrada a la casa de Rafaela, declaró lo siguiente: "He asked me to accompany him to the house of Rafaela, inasmuch as they had only recently known each other, and he said he might be mistaken in recognizing his new superior." Si José Estrada había de comenzar a prestar sus servicios por qué había de hacerlo por la noche a hora tan intempestiva? Generalmente, se comienza a prestar los servicios en las primeras horas del día y no por la noche, a menos que haya un motivo especial, y en este caso no hay motivo razonable para que comience Estrada a prestar sus servicios de chófer después de las 8:30 de la noche. La presencia de Canlas en la entrevista de José Estrada con Rafaela Giron a hora tan extraordinaria revela el asunto secreto que tenían los tres, como el de convenir en la forma cómo había de ser asesinado San Agustín. La declaración de Canlas, en vez de explicar satisfactoriamente su presencia en hora tan intempestiva, corrobora la teoría de la acusación de que los tres planearon definitivamente en aquella noche la forma cómo se había de realizar el criminal propósito de matar a San Agustín. Sin el acompañamiento de Tomás Canlas, José Estrada podía retroceder: podía no acudir al lugar, según previo acuerdo. Con Canlas, el inductor, el agente activo de Rafaela, se aseguró la llegada de Estrada. Toda posible vacilación de parte de Estrada se conjuró con la compañía de Canlas. La participación, pues, de éste fué indispensable para la consumación del asesinato de San Agustín.

Se contiende por la defensa que la declaración no corroborada de Estrada no es admisible de acuerdo con la Regla 123, artículo 12 y no debe ser tenida en cuenta. No se puede suscitar por primera vez en esta jurisdicción la cuestión de la inadmisibilidad de la declaración del testigo porque no fué objetada en tiempo oportuno en el Juzgado inferior. (Tan Machan *contra* De la Trinidad, 3 Jur. Fil., 703; Estados Unidos *contra* Inductivo, 40 Jur. Fil., 88; Ramiro *contra* Graño, 54 Jur. Fil., 797; Vda. de *Eche-*

goyen *contra* Collantes, 58 Jur. Fil., 562; De León *contra* Padua, 42 Gac. Of., 521). No erró el Juzgado *a quo* al tener en cuenta tal prueba. Además, "la falta de corroboración afecta tan sólo al crédito que merece el testigo y de ninguna manera a la competencia de éste, y si su declaración satisface a la Corte en cuanto a la culpabilidad del acusado, fuera de duda racional, la misma es suficiente." (Estados Unidos *contra* Ocampo, 5 Jur. Fil., 357; Estados Unidos *contra* Maharaja Alim, 38 Jur. Fil., 1).

Las pruebas obrantes en autos demuestran que el acusado-apelante ha infringido el artículo 248, párrafo 1, en relación con el artículo 17 del Código Penal Revisado.

Se confirma la sentencia apelada con costas.

Parás, Perfecto, Bengzon, Tuason, y *Montemayor, MM.,* están conformes.

Moran, Pres., Feria y *Briones, MM.,* conformes con la parte dispositiva.

Se confirma la sentencia.

[No. L–1739. February 3, 1949]

MANUEL LIM and EMILIA QUINTOS DE LIM, petitioners and appellants, *vs.* THE REGISTER OF DEEDS OF RIZAL, opositor and appellee.

1. TORRENS REGISTRATION; ANNOTATION AS AN ENCUMBRANCE.—There is no doubt that the annotation "subject to such disposition as the government may adopt regarding transactions consummated during the Japanese occupation" in the deed of cancellation of the mortgage would be an encumbrance on the title or a charge on the property of the petitioners, because it would make the title to the property subject to any action which the government may take on the validity of the payments made with Japanese war notes, so that in case the Government, through Congress or the Supreme Court of the Philippines, declares those payments invalid the property would have to continue as a security for the payment of the mortgage obligation.

2. ID.; SUBSEQUENT PURCHASER; TRANSFER CERTIFICATE OF TITLE FREE OF ALL INCUMBRANCE.—According to section 39 of Act No. 496, as amended, every subsequent purchaser of a registered land under the Torrens System who takes a transfer certificate of title for value in good faith, shall hold the same free of all incumbrance, except those noted on the certificate and any of the legal incumbrances enumerated in said section.

3. ID.; SECRETARY OF JUSTICE HAS NO POWER TO DIRECT THROUGH CIRCULAR NO. 14 TO INSERT ANNOTATION OF INCUMBRANCE ON CERTIFICATE OF TITLES TO LAND.—The Secretary of Justice had no power or authority to order or direct, by Circular No. 14, series of 1945, the respondent register of deeds to insert the annotation, above quoted, and reciprocally the latter is not bound to comply with such instruction.

4. ID.; ID.—Under section 79 (B) of the Administrative Code the Secretary of Justice is only empowered to promulgate rules,

regulations, orders, circulars and other instructions not *contrary to law*, to all offices and dependencies of his department; and compliance with the instruction in question would be contrary to the Constitution, for it would impair the obligations of contract or deprive a person of his property without due process of law.

5. STATE; SOVEREIGN POLICE POWER.—It can not be contended that the Secretary of Justice issued said circular in the exercise of the police power of the State, because Congress has not delegated such power to the Secretary of Justice. The sovereign police power is exercised by the State through its legislative branch; and its valid exercise may be and are, generally, delegated to towns, municipalities, and cities, and sometimes also to the Chief Executive in case of national emergency.

6. OBLIGATIONS AND CONTRACTS; MILITARY OCCUPATION; PAYMENTS MADE WITH JAPANESE WAR NOTES, VALIDITY OF.—Payments made with Japanese war notes during the occupation of obligations contracted before the war to the creditor or his legal representative, and accepted by the latter, are valid and release the said obligations. Philippine Congress having not enacted any act on the matter, the ruling of this court in the cases of Haw Pia *vs.* China Banking Corporation, L–554, 45 Off. Gaz. (Supp. to No. 9), 229; Hongkong and Shanghai Banking Corporation *vs.* Perez Samanillo, G. R. No. L–1345 is the disposition adopted by our government regarding transactions consummated during the Japanese occupation, to which said annotation refers.

APPEAL from a judgment of the Court of First Instance of Rizal. Garcia, J.

The facts are stated in the opinion of the court.

Potenciano Villegas, Jr. for appellants.

Assistant Solicitor General Guillermo E. Torres and *Solicitor Antonio A. Torres* for appellee.

FERIA, *J.:*

Manuel Lim and Emilia Quintos de Lim mortgaged on December 2, 1940, four parcels of land with its improvements thereon, described in the transfer certificate of title No. 21783 of the office of the Register of Deeds of Rizal, with the Agricultural and Industrial Bank for ₱10,500, payable by installments. The mortgagors had been making partial payments on account of the mortgage obligation. On June 5, 1944, the mortgagors paid in full the balance due to the mortgagee, and the latter executed a deed of cancellation of the mortgage. The deed of cancellation together with the mortgagors' duplicate of said transfer certificate No. 21783 were filed with the Register of Deeds for the City of Manila on October 3, 1944, and upon payment of the corresponding registration fees by the mortgagors, official receipt No. 0508458 was issued to them. The deed of cancellation was entered in the Day Book, Volume 9, of the Registry of Deeds on October 3, 1944, 11:05 a. m., according to the certificate issued by the

Register of Deeds of Manila, presented as Annex A in this case, which reads as follows:

"At the instance of Mr. Potenciano Villegas, Jr., I, Mariano Villanueva, Register of Deeds for the City of Manila, do hereby certify that in the Day Book, Volume 9 of this Registry, there appears the following entry, to wit:

"Number of entry	25716
Date of filing	October 3, 1944
Hour of filing	11:05 a. m.
Nature of document	Cancellation
Executed by	Agricultural and Industrial Bank
In favor of	Manuel Lim
Date of instrument	June 5, 1944
Certificate of title	21783
Presented by	A. Francisco
Postal address	401 Cu Unjieng
Contract value	₱10,500
Remarks	Pasay

and that the document object of the foregoing entry does not appear among the salvaged records of this Office.

"In witness whereof I have hereunto set my hand and affixed hereto the seal of my Office this 8th day of May, 1947, in the City of Manila, Philippines."

On February 24, 1947, the Court of First Instance of the Province of Rizal, Rizal City Branch, acting upon a verified petition of the mortgagors, issued an order requiring the register of deeds of said province to issue a new duplicate of transfer certificate of title No. 21783, in lieu of the owner's copy which was either burned or lost during the liberation of the City of Manila, in which the cancellation of the mortgage of the property in favor of the Agricultural and Industrial Bank was not registered or annotated. In order to facilitate the annotation of the deed of cancellation of said mortgage, the mortgagors asked and obtained from the R. F. C., successor of the Agricultural and Industrial Bank, a new deed of cancellation of the mortgage, and said R. F. C. has executed a new deed of cancellation in favor of the mortgagors with the following annotation: "* * * subject to such further disposition as the Government may adopt regarding transactions consummated during the Japanese occupation."

The mortgagors demanded from the register of deeds of Rizal the registration of the deed of cancellation without the annotation above quoted, but the latter refused to do so, and for that reason the petitioners filed a petition with the Court of First Instance of Rizal, Rizal City Branch, to compel the respondent to register the cancellation of the mortgage, but without the annotation in question, on the following grounds:

"(*a*) That had the annotation of the Deed of Cancellation of mortgage in the petitioners' certificate of title No. 21783 for ten thousand five hundred pesos (₱10,500) by the Agricultural and Industrial Bank been accomplished in due time by the register of

deeds of Manila under its primary entry No. 25716, the annotation in the title of the said deed of cancellation would not bear any such annotation, the non-fulfillment of which, your petitioners should not be blamed; and

"(*b*) That the annotation intended and mentioned in paragraph 8 hereof, which is being done by the Rehabilitation Finance Corporation and also by every register of deeds, in accordance with Circular No. 14 of the Department of Justice, is illegal and, for that effect, null and void, because it is not based on any provision of law."

The respondent register of deeds filed an opposition to the petition alleging only as defense:

"That the annotation sought to be eliminated in the certificate of title is inserted therein as a precautionary measure and in compliance with circular No. 14, series of 1945, of the Department of Justice;

"That the annotation 'subject to such disposition as the government may adopt regarding transactions consummated during the Japanese occupation' is by instruction and direction of the Secretary of Justice inserted in all cases of registrations filed during or after the Japanese occupation;

"That the register of deeds is a subordinate of the Secretary of Justice and has to comply with circular No. 14;

"That said annotation has to be inserted or written in all certificates issued by the register of deeds in compliance with said circular until said circular is either revoked and set aside or altered or amended by competent authority;

"That the duty of the register of deeds in this matter is ministerial in nature;

"That this requirement contained in Circular No. 14 is made as precautionary measure based on reasons of public policy for the protection of all concerned and is valid exercise by the State of its police power."

The lower court, after considering the petition, answer of the respondent, and petitioners' reply to the answer, rendered or issued an order upholding the respondent's contention or defense, and denying the petition that the respondent be ordered to register the deed of cancellation without the annotation therein contained.

The petitioners appealed from the order of the lower court to this Court, and the case is now before us on appeal.

There is no doubt that the above-quoted annotation in the deed of cancellation of the mortgage would be an encumbrance on the title or a charge on the property of the petitioners, because it would make the title to the property subject to any action which the government may take on the validity of the payments made with Japanese war notes, so that in case the Government, through Congress or the Supreme Court of the Philippines, declares those payments invalid the property would have to continue as a security for the payment of the mortgage obligation.

According to section 39 of Act No. 496, as amended, every subsequent purchaser of a registered land under the Torrens System who takes a transfer certificate of title

for value in good faith, shall hold the same free of all incumbrance, except those noted on the certificate and any of the legal incumbrances enumerated in said section. It is obvious, and of judicial notice, that such incumbrance was not and could not have been noted on the transfer certificate of title No. 21783 nor on the deed of cancellation of the mortgage executed by the Agricultural and Industrial Bank on June 5, 1944, and filed for registration on October 3, 1944, which were lost or destroyed during the liberation according to Annex A, above quoted. Therefore, the Secretary of Justice had no power or authority to order or direct, by Circular No. 14, series of 1945, the respondent register of deeds to insert such annotation, and reciprocally the latter is not bound to comply with such instruction.

Under section 79 (B) of the Administrative Code the Secretary of Justice is only empowered to promulgate rules, regulations, orders, circulars and other instructions *not contrary to law*, to all offices and dependencies of his department; and compliance with the instruction in question would be contrary to the Constitution, for it would impair the obligations of contract or deprive a person of his property without due process of law. It can not be contended that the Secretary of Justice issued said circular in the exercise of the police power of the State, because Congress has not delegated such power to the Secretary of Justice. The sovereign police power is exercised by the State through its legislative branch; and its valid exercise may be and are, generally, delegated to towns, municipalities, and cities, and sometimes also to the Chief Executive in case of national emergency. (Primicias *vs.* Fugoso, L–1800, promulgated January 27, 1948, 45 Off. Gaz., 3280.) But it is a well settled rule that a legislative power delegated to a body or person cannot be delegated by the latter to another.

But even if the annotation in question were not an incumbrance, and the Secretary of Justice had power to issue the aforesaid circular No. 14, such annotation would have no longer any effect and, therefore, the insertion thereof in documents relating to transactions consummated during the Japanese occupation would not serve any purpose, in view of the ruling laid down by this Supreme Court in the case of Haw Pia *vs.* China Banking Corporation, L–554, 45 Off. Gaz. [Supp. to No. 9], 229; Hongkong and Shanghai Banking Corporation *vs.* Perez Samanillo, G. R. No. L–1345, in which it was held that payments made with Japanese war notes during the occupation of obligations contracted before the war to the creditor or his legal representative, and accepted by the latter, are valid and release the said obligations. Philippine Congress having not enacted any act on the matter, the ruling of this Court in the cases

aforementioned is the disposition adopted by our government regarding transactions cosummated during the Japanese occupation, to which said annotation refers.

The fact that the new deed of cancellation executed by the Rehabilitation Finance Corporation, which is not a party in this case, contains also such annotation, can not be a bar to the rendering of this decision for the following reasons: First, because the annotation was not and could not have been inserted in the deed of cancellation executed on June 5, 1944, by its predecessor in interest, the Agricultural and Industrial Bank, and filed with the respondent on October 3, 1944 (Annex A); and the respondent appellant could and would have registered the cancellation without such annotation, had it not been for the Circular No. 14, because he alleges, as the only ground for his refusal to do so, the existence of said circular and not the annotation in the new deed of cancellation. Secondly, because it is to be presumed that such annotation, which is identical to that contained in Circular No. 14 of the Department of Justice, was only inserted in the new deed of cancellation in conformity with said circular, for the mortgagee is a government banking institution. And lastly, because although the Rehabilitation Finance Corporation is not a party, and therefore it can not legally be bound by the judgment in this case, the said Rehabilitation Finance Corporation can not suffer and, therefore can not claim against anybody, any damage because of the omission of said annotation in the deed of cancellation of the mortgage, for the reasons already set forth in the preceding paragraph.

Therefore, the order of the lower court is reversed, and the respondent register of deeds is ordered to register the deed of cancellation of the mortgage without the annotation under consideration. So ordered.

Pablo, Perfecto, Briones, and *Reyes, JJ.,* concur.

Parás, J., concurs in the result.

BENGZON, *J.,* concurring:

For the reasons explained by Mr. Justice Feria, I agree that the Secretary of Justice has no power to issue the Circular No. 14, series of 1945.

I must add, however, that although I believe that when the deed of cancellation submitted for registration contains the reservation herein described or any other similar reservation, the register of deeds may not, by himself, disregard or eliminate such contractual clause, in this particular instance I concur in the disposition of the case because I am sure, as explained by the *ponente,* that the original deed of cancellation did not contain the reservation, and, in my opinion, the cancellation should be done in accordance with the *original* deed, the new deed issued

by the Rehabilitation Finance Corporation being merely an *evidence* of the said original deed of cancellation.

TUASON, *J.*, concurring and dissenting:

I concur in the ruling that Circular No. 14, Series of 1945, of the Secretary of Justice is null and void, in that it requires the registers of deeds to perform an act not authorized by law. It is the register of deeds' ministerial duty to record without any material alteration such instruments as are by law entitled to be recorded. It is beyond his power to add to or detract from the registration anything not stipulated in voluntary instruments thus filed and recorded. This must be especially the case where the alien matter intended to be inserted in or omitted from the registration is calculated to protect a party or parties who do not ask protection. Registers of deeds are not guardians entrusted with watching over the private interests of contracting parties who are fully capable of looking after their own affairs.

But precisely because the register of deeds has no discretion to deviate from the tenor of the instruments presented for registration, he may not be compelled to register the cancellation of a mortgage without the condition set out thereon. Such condition he has to include in the registration, not by virtue of the Secretary of Justice's circular but because it is embodied and imbedded in the deed of cancellation.

On this ground, I dissent from this Court's decision. I think it is a serious mistake to order the register of deeds to disregard the condition stated in the cancellation deed without the knowledge and consent of the Rehabilitation Finance Corporation. The elimination of an asserted lien in this deed, which the appellants themselves secured and presented to the register of deeds, without giving the mortgagee an opportunity to be heard, violates the fundamental rules of due process. In its consequences, this case is not between the appellants and the register of deeds; it is between them and the Rehabilitation Finance Corporation.

The cases of Haw Pia *vs.* China Banking Corporation, G. R. No. L–554, and Hongkong and Shanghai Banking Corporation *vs.* Perez Samanillo, G. R. No. L–1345, do not govern this case. There are fundamental differences in the facts and in the principles involved between those two cases on the one hand and the present case on the other.

But this is not here or there. Granting that the present case falls within the rule laid down in those two cases, it does not follow that this Court or any other court may proceed without trial and render a decision the effect of which would deprive a third party of his asserted property right without being given his day in court. To be heard

according to established procedure in the defense of one's right, regardless of the merits of his defense, is both a constitutional precept and a rule founded on the first principles of natural justice, a rule older than written constitutions. The belief of judges that an accused in a criminal case or a defendant in a civil suit has no defense is never a legal justification in a government of laws for discarding the prescribed forms and solemnities from which alone judicial decisions derive their sanctity, force and validity. In truth, court decisions and the interpretation of laws by the courts are far from infallible and do not provide a permanent measuring stick of right and conduct. Witness the not infrequent modification, abandonment and reversal of settled and new doctrines, not only by other judges but by the same judges that announced them.

The entry in the daybook of the first cancellation deed has not changed this aspect of the case. The scope of an entry in the daybook has been defined in Fidelity and Surety Co. *vs.* Conegero, 41 Phil., 396, in which this Court, through Mr. Justice Street, speaking for a unanimous Court *in banc,* said:

"We think that, where the statute says that an instrument shall be regarded as registered from the time the annotation is made in the entry book, these words must be understood to apply to such instruments as are competent to transfer, or affect, the Torrens title and upon which a new certificate is in fact issued in due course. What is here really meant, we suppose, is that wherever registration is actually effected, and a new certificate issued, the registration is retroactive and takes effect by relation as of the date when the annotation in the entry book was made. In the light of this interpretation it is quite evident that the mere annotation of a contract relating to land covered by a Torrens title, which is not followed by registration and the emission of a new certificate, is without significance as regards its effect upon such title. To put the point another way, it might be said that the constructive registration, if such it be, which results from the notation of a document in the entry book cannot be given effect in the case where actual registration, or the actual issuance of a new certificate, is impossible."

The entry in question, as all such entries, is at best incomplete. It does not show that the cancellation was absolute; it might be conditional. It does not show the personal status of the parties and their places of residence, the name of the notary public before whom it was acknowledged, the description of the land mortgaged, and other circumstances which by law have to be noted. The entry names Manuel Lim alone as the person in whose favor the document was executed when the pleadings state that his wife was one of the mortgagors.

That the entry is not enough basis for the register of deeds to make the registration in the registry book or on the original certificate of title is demonstrated by the

fact that the mortgagors obtained and presented a new cancellation deed in substitution of the old one. If the new deed was presented merely to facilitate the registration, we do not see in what way it would have helped or did help in this connection.

The requirement that a new deed be presented when the instrument first presented is lost before it is registered or noted in the title is not an empty formality. The annotation of a voluntary instrument in the registry book and/or on the certificate of title does not fulfill the whole scheme and purpose of registration of conveyances and mortgages. The register of deeds as the repository of all documents presented for registration is charged with the duty of keeping them on file. His is a ministerial duty and those documents are his exclusive authority to make the final entry. At the same time, they are his protection against charges of fraudulent registration. In the same manner, the requirement that these documents be preserved serve to protect title-holders against distorted registration of genuine transactions and registration of forged documents.

In view of all these, registers of deeds, by practice and necessity if not by express provision of law, are forbidden to make registration of documents that have been lost or destroyed after their presentation and entry in the day-book, irrespective of the cause of and the blame for the loss and destruction. The invariable step taken when this happens is for the interested parties either to produce an authenticated copy of the lost or destroyed document or to secure an order to the register of deeds from the proper court. The latter is the only course open when, as in this instance, the parties are in disagreement as to the terms and conditions of the cancellation. And any motion filed with the court seeking an order against a register of deeds has to be set for hearing with notice to all the parties in interest. (*See* section 112 of Land Registration Act [No. 496].) Without hearing or adequate notice thereof, no court order can have any binding effect on the adverse parties. That the mortgagors, the provincial fiscal and the lower court conducted the proceeding on an erroneous assumption of the issue did not operate to deprive the Rehabilitation Finance Corporation of its right to a hearing. Only its action or inaction after proper summon could work to forfeit this right. If the mortgagors had sought their remedy, as probably they should have done, under Republic Act No. 26, approved September 25, 1946, which prescribes the procedure for reconstruction of lost or destroyed certificates of title and liens and encumbrances affecting them, the mortgagee would no less have been entitled to an opportunity to be heard.

Judgment reversed.

[No. L–1585. February 10, 1949]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* GEORGE E. RICE, defendant and appellant

1. CRIMINAL LAW; TREASON; EVIDENCE; GUILT OF ACCUSED SHOULD BE PROVEN BEYOND REASONABLE DOUBT; EVIDENCE TO BE BELIEVED MUST BE IN ACCORD WITH COMMON EXPERIENCE AND OBSERVATION OF MANKIND.—After a careful consideration of the evidence, we have come to the conclusion that it does not justify a finding of guilt beyond reasonable doubt. It is hard to believe that appellant, himself a guerrilla, and whose father was during the Japanese occupation confined in the Sto. Tomas University concentration camp, could have denounced and caused the arrest of M. S. E. H., another guerrilla operative. The testimonies of the witnesses for the prosecution to the effect that appellant was confined in Fort Santiago for only five days, cannot be more believable than the testimony of appellant that he was confined up to November 7, 1944, that is, he was released four days after M. S. E. H. and companions were released. We are inclined to believe that appellant was arrested by the Japanese because of his guerrilla activities, the same as M. S. E. H.
2. ID.; ID.; ID.; MERE SUSPICION OR CONJECTURE COULD NOT BE ACCORDED WEIGHT AND CREDENCE.—The fact that months before the arrest there was a misunderstanding between them to the extent that they had a court litigation, might have induced Mrs. H to suspect that appellant caused her arrest, but her suspicion is not borne out by the facts. Her testimony and that of R. E. that appellant was released five days after the arrest cannot be believed because both witnesses could not be possibly in a position to have a knowledge of said alleged release, when they were confined in their respective cells from where they could have not seen those who were released by the Japanese. No competent evidence whatsoever has been presented to show that appellant has been actually out of Fort Santiago from his arrest on July 31, 1944, up to his release on November 7, 1944.

APPEAL from a judgment of the People's Court.

The facts are stated in the opinion of the court.

Jose S. Sarte for appellant.

Assistant Solicitor General Ruperto Kapunan, Jr., and *Solicitor Manuel Tomacruz* for appellee.

PERFECTO, *J.:*

Appellant is accused of having denounced and caused the arrest of Maria Salome Escudero Holland, then in the active service of the Intelligence Corps of the Escudero Guerrila Unit in Sorsogon, who was detained by the Japanese Military Police in Fort Santiago for three months, from July 31 to November 3, 1944.

The trial court found appellant guilty of treason and sentenced him to life imprisonment with the accessory penalties prescribed by law, and to pay a fine of ₱10,000 and the costs.

Maria Salome Escudero Holland testified that appellant and his wife were boarders in her house at 943–N Raon,

Manila, since October, 1943. In the latter part of 1944, "I received threats from the accused if I will continue bothering his wife," saying "that if I ever bother his wife, I will crawl under his feet." At 10 o'clock on the night of July 31, 1944, "members of the Japanese Military Police came over to the place where I live and put me, my two cousins, and a girl friend, under arrest, and brought us that same night to Fort Santiago." Others arrested were Rosalina Bola-Escudero, Remedios Ferrer and Julia Bootes. "At Fort Santiago I was taken for investigation several times, and tortured and made to suffer physically and mentally by the Japanese." "The accused was kept in a special room in Fort Santiago for five days, later on he was released to look for more persons to be complicated in my case." During those five days she saw the accused "once," but several times during the last month of her stay in Fort Santiago, "when he was confronted with me to reiterate his statements or accusations against me." She was accused by appellant of having a guerrilla outfit in Manila, of housing runners carrying messages to her uncle Salvador Escudero, governor of Sorsogon and guerrilla leader, of being pro-American, of helping American prisoners of war, of passing news to guerrillas and changing American treasury warrants for the benefit of guerrillas and American prisoners; in the investigation, Rosalina Escudero, Remedios Ferrer, Julia Bootes, and two Japanese, the investigator and the interpreter, were present. As the witness had been suspicious of the accused, she gave him three months to vacate her house, and when he refused, he brought the case to the court. It is true that she engaged in guerrilla activities and appellant must have suspected her. The accused reiterated "all his accusations against me and he insisted that I was telling a lie." She was released on November 3, 1944. When she returned to her house, she found it in bad shape. "My belongings as well as my husband's, and all the belongings of my cousins and my friend, were sold by Mr. and Mrs. George Rice, including my money which, he said, was with him for safekeeping." She does not remember the exact amount of her money which came to the possession of appellant. It was between sixty and eighty pesos. The value of her belongings was more than ₱2,000 (Philippine currency). "The Japanese Military Police gave me an aparador and a bed belonging to the wife of the accused." The latter sold it and the proceeds were delivered to the Japanese Military Police "who, in turn, gave it to me." When appellant accused her "he was giving very vague evidence of the accusations."

Rosalina Escudero declared that she was among those who were arrested with the witnesses on July 31, 1944, and kept confined at Fort Santiago until released on No-

vember 3, 1944. According to her, at Fort Santiago, appellant was brought before her and her cousin Maria Salome Escudero Holland and tried to induce said cousin to admit that she was changing treasury warrant notes, that she allowed Jose Amor to stay in her house and that she and Mrs. Cooper had sent packages of clothes, food and cigarettes to American prisoners at Cabanatuan. She also testified that appellant stayed at Fort Santiago for five days and after said period, he was sent out to look for Jose Amor and Mrs. Cooper.

Jose Amor testified that he was a courier carrying messages between Salvador Escudero, the guerrilla chieftain of Sorsogon, and his brother in Manila, Judge Manuel Escudero, about guerrilla activities, and in coming to Manila he used to stay in the house of Mrs. Holland.

Judge Manuel Escudero, the last witness for the prosecution, testified that for security measures, instead of meeting Jose Amor in his house, he used to meet him in the house of his daughter, Mrs. Holland. Months before the latter's arrest, Mrs. Holland advised him of her differences with the accused and, on his advice, her daughter filed in May, 1944, with the municipal court of Manila ejectment proceedings against the accused, to compel him to vacate the house in which he and his wife were living with Mrs. Holland at 943–N Raon, Manila.

The evidence for the defense has shown that appellant is the son of an American citizen and a Filipina. His father was confined by the Japanese in the Sto. Tomas concentration camp since 1942 until released by the American forces of liberation.

Appellant testified that he was born in Cadiz, Negros Occidental, and never left the Philippines except when he studied for two years in Hongkong. When the Japanese came, he was in Davao and transferred to Manila in August, 1942, to live in the house of his mother-in-law. In 1943 he transferred to the house of Mrs. Holland. He was a guerrilla engaged in allied intelligence work. As member of the Allied Intelligence Bureau since the early part of 1943, he was under the command of Vicente Alvarez, Jr. His work was to find the number of planes that were arriving at Nielson Airfield. In July, 1944, he was arrested by the Japanese Military Police for his activities in exchanging emergency notes. Also arrested with him were Maria Salome Escudero Holland, Lina Holland, Judy Bootes, and another. He was confined in Fort Santiago and released only on November 7, 1944. He had not been a spy of the Japanese and it is not true, as testified by Rosalina Escudero and Maria Salome Escudero Holland, that he caused the arrest of the latter. He was investigated in Fort Santiago, where he was confined first in a dungeon and after a month in a regular cell. When he was released

on November 7, he went to meet Vicente Alvarez, Jr. who brought him first to the hospital for calcium injections and then to the mountains of Bosoboso to join the ROTC. While in Fort Santiago, he did not know it the other prisoners who were arrested with him were also investigated, implying denial of the alleged confrontation with them by the two lady witnesses for the prosecution.

Captain Enrique H. R. Avila, Philippine Army, testified that he was acquainted with the accused since December or November, 1943, when he was sent to Manila by Major Villamor to command the Allied Intelligence Bureau and to do espionage work for the Southwest Pacific Area of General MacArthur. Villamor was then in Negros Occidental and the witness communicated to him information by radio transmitter. There was a hideout of secret intelligence men at Dapitan, where the witness used to meet Vicente Alvarez, Jr., usually accompanied by the accused, who was one of the intelligence men of Alvarez.

After a careful consideration of the evidence, we have come to the conclusion that it does not justify a finding of guilt beyond reasonable doubt. It is hard to believe that appellant, himself a guerrilla, and whose father was during the Japanese occupation confined in the Sto. Tomas University concentration camp, could have denounced and caused the arrest of Maria Salome Escudero Holland, another guerrilla operative. The testimonies of the witnesses for the prosecution to the effect that appellant was confined in Fort Santiago for only five days, cannot be more believable than the testimony of appellant that he was confined up to November 7, 1944, that is, he was released four days after Maria Salome Escudero Holland and companions were released. We are inclined to believe that appellant was arrested by the Japanese because of his guerrilla activities, the same as Maria Salome Escudero Holland.

The fact that months before the arrest there was a misunderstanding between them to the extent that they had a court litigation, might have induced Mrs. Holland to suspect that appellant caused her arrest, but her suspicion is not borne out by the facts. Her testimony and that of Rosalina Escudero that appellant was released five days after the arrest cannot be believed because both witnesses could not be possibly in a position to have a knowledge of said alleged release, when they were confined in their respective cells from where they could have not seen those who were released by the Japanese. No competent evidence whatsoever has been presented to show that appellant has been actually out of Fort Santiago from his arrest on July 31, 1944, up to his release on November 7, 1944.

The appealed decision is reversed, appellant acquitted, and he shall be released immediately upon promulgation of this decision.

Moran, C. J., Parás, Feria, Bengzon, Briones, Tuason, and *Montemayor, JJ.,* concur.

PABLO, *M.,* concurrente:

En la noche del 31 de Julio de 1944, a eso de las 10:00, varios soldados japoneses arrestaron a María Salomé Escudero Holland en su casa en Manila, juntamente con Rosalina Escudero, Remedios Ferrer y Judy Bootes. Todas fueron llevadas a la Fuerte de Santiago en donde estuvieron detenidas por tres meses y tres días. María y Rosalina fueron investigadas varias veces para comprobar si es verdad que María se dedicaba a ayudar a las guerrillas, según denuncia.

María Salomé Escudero declaró lo siguiente:

"Q. You said the accused was present six or seven times during the period you were being investigated by the Japanese; did the accused take any participation or not in that investigation?—A. The accused was asked to reiterate all his accusations in front of me.

"Q. What did the accused do when he was asked to reiterate all the accusations against you in your presence?—A. He reiterated all his accusations against me and he insisted that I was telling a lie."

Esta declaración está corroborada por Rosalina Escudero.

"Q. What did your cousin, Mrs. Maria Salome Escudero Holland say with respect to the charges made by the accused when he was confronted with you and your cousin?—A. Of course she denied.

"Q. And when your cousin, Mrs. Maria Salome Escudero Holland denied the charges, what did the accused do or say, if he said anything?—A. He was coaching her to admit them. He said to her, in this manner, and these words: 'Come on, Sally, you were doing all that, you better admit them, so that I can help you'."

Del testimonio de María y Rosalina se desprende que el acusado fué quien denunció: si no, no le hubiera ordenado el japonés que reiterase sus acusaciones en presencia de las detenidas.

María era la dueña de la casa, una habitación de la cual ocupaba el acusado, como inquilino. Por las personas que el acusado recibía en su habitación, María le suplicó que la desocupara concediéndole 90 días para buscar otro local. Como el acusado no atendía esta súplica, María le demandó por desahucio y en 22 de Junio de 1944 se dictó sentencia contra él ordenándosele a desalojar la habitación dentro del término de 90 días. Al mes siguiente, fué arrestada María con sus tres compañeras. No hay duda que el acusado quiso vengarse por la orden de desahucio. En vez de ser lanzado judicialmente, el acusado se valió del medio más fácil disponible entonces: el arresto y confinamiento de su casera. Y él se quedó en la casa libremente, a sus anchas. Pero es ésto suficiente motivo para que se llegue a la conclusión de que el acusado es culpable del

delito de traición? Este delito se comete contra el Estado, contra el Commonwealth, ayudando a sus enemigos. No hay prueba alguna de que el acusado haya ayudado a los soldados japoneses en el exterminio de las guerrillas, ni consta que haya denunciado a las compañeras de María que habían ayudado también a las guerrillas y a los americanos concentrados. Él sabía que Judy Bootes ayudaba a los americanos que estaban concentrados en Cabanatúan y en Sto. Tomás, y no la denunció. De ésto se deduce que no quiso obstaculizar la campaña de resistencia: solamente quiso eliminar a María de su casa para que no fuese él lanzado judicialmente. El móvil, pues, era puramente personal contra su casera y no contra las guerrillas, ni contra los americanos concentrados porque uno de ellos era su padre. Si el acusado tuviera la insana intención de hacer fracasar esa campaña de resistencia, hubiera denunciado también a Vicente Alvarez Jr., con quien operaba para transmitir informaciones a la Intelligence Bureau al mando del Major Villamor, y el daño causado hubiera sido incalculable.

Por tanto, voto por la absolución del acusado.

Judgment reversed; defendant acquitted.

[No. L–1667. February 10, 1949]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* FERNANDO TOLENTINO ET AL., defendants. JOSE DE LA CRUZ and PASCUAL ORDOÑEZ, appellants.

CRIMINAL LAW; MURDER; EVIDENCE; VOLUNTARY AND CORROBORATED WRITTEN STATEMENTS OF ACCUSED.—Written statements which were made freely and voluntarily by the accused whereby they admitted participation in the act complained of, and sufficiently corroborated by other and independent evidence introduced during the trial of the case, are sufficient basis for conviction.

APPEAL from a judgment of the Court of First Instance of Pampanga. Bautista, J.

The facts are stated in the opinion of the court.

Artemio C. Macalino and *Rodrigo G. Pañgan* for appellants.

First Assistant Solicitor General Roberto A. Gianzon and *Solicitor Guillermo E. Torres* for appellee.

MONTEMAYOR, *J.:*

In the Court of First Instance of Pampanga, Jose de la Cruz, Pascual Ordoñez, Teofilo Bungue, Fernando Tolentino *alias* Magelan, *alias* Berting, Esteban Basilio *alias* Rusting, Felix Singian *alias* Oscar, John Doe *alias* Estrella, Peter Doe *alias* Ely and four others were charged with the crime of murder for the killing of German Angeles, said crime having been committed in the month of January

or February, 1945 in the municipality of Porac, Pampanga. Only De la Cruz, Ordoñez, Basilio and Bungue were and could be arrested, but Basilio for some reason not explained, managed to escape from confinement. So, only De la Cruz, Ordoñez, and Bungue were tried, and at the end of the trial, upon motion of the fiscal based on lack of evidence, the case was dismissed as against Bungue. De la Cruz and Ordoñez were found guilty of murder and were sentenced each to life imprisonment with the accessories of the law, to indemnify the heirs of German Angeles in the sum of ₱2,000 and to pay the costs. The two are appealing from that decision.

There is no question about the death of German Angeles. On May 31, 1946, his brother Demetrio Angeles accompanied by military and municipal policemen located the grave of German Angeles upon indication of Simeon Bungue who had previously been informed thereof by Esteban Basilio. The bones shown on the picture Exhibit C recovered from the grave were duly identified as those of German Angeles, by his widow Angela Gomez and his brother Demetrio Angeles, thru his set of teeth (dentadura), and of a belt found with the bones, and known to be a personal belonging of the deceased.

While under arrest and in the course of their investigation the two appellants (Ordoñez and De la Cruz) made written statements under oath in their native dialect (Pampango), Exhibits A and B, duly translated into English as Exhibits A-1 and B-1 and introduced and admitted in evidence.

Because of the importance of the affidavits Exhibits A-1 and B-1 forming as they do, in the main, the basis of our decision, as well as that of the trial court, instead of giving a resume or extract of the same, we are reproducing them here for purposes of reference.

"EXHIBIT A-1

"I, Pascual Ordoñez, married to Narcisa Cayanan, 23 years old, resident of barrio Sta. Cruz, Porac, Pampanga, after having been sworn according to law, of my own free will and without any force or intimidation whatsoever, depose and say:

"That in the month of January 1945, more or less when the Americans had newly arrived in Porac, Pampanga, while I was walking on the road returning to my house in barrio Sta. Cruz, coming from the house of my brother-in-law, Teodoro Miclat in barrio Manibaug, Magelan or Berting (Fernando Tolentino) saw me and he was in the house of Pitong Ayson in barrio Manibaug Paralaya. He called me, I went to the said house of Pitong Ayson and Magelan went down and met me in the yard, then Magelan told me that he wanted German Angeles taken and that I would have him taken by Esteban Basilio (*alias* Rusting). I assented. At that time and even at present I know that if one ordered the taking of a person by Hukbalahaps after being taken he would be killed. I asked Magelan why he wanted him taken and he said that there is a report. I did not ask what is the report about because Magelan

is the head of our Hukbo organization in the whole municipality of Porac and even the Americans have already arrived he was still our highest and we obey him. We separated and I proceeded to my home, and after one week of my conversation with Magelan I met Rusting (Esteban Basilio) in barrio Sta. Cruz. I told this to get German Angeles as it was the order of Magelan. After this order that I gave to Rusting who is with me in the organization of Hukbalahap also and an organizer like myself I did not know whether he followed already in my order to get German Angeles until the following afternoon of the following day at 3:00 p.m. more or less I was coming from Angeles and returning home on my way towards Porac I met Jose de la Cruz riding on a carromata and carried by two persons and they were Estrella whose name I do not recall until now but I know that he had married to a woman of Caldera, Angeles and if I see this Estrella I will surely recognize him; the one with him carrying Jose de la Cruz in the carromata was Pacifico Pineda, *alias* Eddie, this carromata in which they were riding came from the direction of Porac and was going towards Angeles. As soon as I recognized them and I recognized the wounded whom they were carrying was Jose de la Cruz *alias* Joe, I stopped the carromata and rode with them in order to help the wounded Jose de la Cruz. I asked this, why he was wounded; he told me Rusting had shot him. As he was very pale and weak from what I could see I stopped asking him, but after the Americans have made him smell something while he was in the ambulance going to Dau, Jose de la Cruz became conscious and I asked him then why Rusting had shot him. He answered that he was shot on account of their killing of German Angeles. When we reached Dau we delivered him to the American Military Hospital. Afterwards I and Estrella left since Pacifico Pineda did not go with us any more to the hospital and as he was left in Angeles."

"EXHIBIT B-1

"I, Jose de la Cruz, single, 18 years old, resident of Hacienda Ramona, Porac, Pampanga, after being sworn according to law, of my free will and without force or intimidation whatsoever, depose and say:

"That in the month of January 1945, more or less when Americans were newly arrived in Porac, one morning, about 9:00 a.m., came to me Felix Singian, Esteban Basilio and Ely, this Ely I did not know by name but I knew him by face and if I see him I can surely recognize him and I know that he is a resident until now in barrio Sta. Cruz, Porac, Pampanga. These three persons came to me in my house in barrio Manibaug because at that time I was residing there and this house is owned by Bernabe Ayson. Esteban Basilio then told me in the hearing of his companions, Felix Singian (*alias* Oscar) want Ely that Magelan or Berting (Fernando Tolentino) wanted me. I asked Esteban Basilio why they wanted me and he answered me that we were going some place, but Esteban Basilio *alias* Rusting did not say what we were going to. After telling me this, Esteban, Felix Singian and Ely left walking towards the house of Magelan or Berting (Fernando Tolentino) which was in barrio Manibaug, and I followed at a distance from them towards also the house of Magelan or Berting, and I think they were ahead about one-half kilometer on the road. When we reached the house of Magelan or Berting I found there Felix Singian, Esteban Basilio and Ely. I also found there Magelan or Berting (Fernando Tolentino). I went up the house of Magelan once in the house we conversed and I asked Magelan what they wanted with me. Magelan told me that we all Felix Singian, Esteban Basilio, Ely and my-

self were necessary to go with him, saying that we were going to barrio Calsadang Bayu, Porac, because we were going to get a person there who was German Angeles, a foreman of the family Santos. After saying this we went down from the house of Magelan, Magelan went with us and companions of Esteban Basilio who were Felix Singian, Jose de la Cruz, and Ely. When we went down the house of Magelan with all my companions we were Magelan, Felix Singian, Esteban Basilio and Ely, they were all armed with revolvers, automatic Cal. .45 with the exception of the revolver carried by Magelan which was Cal. .38, and inasmuch as I had no revolver, when we reached barrio Calsadang Bayu, we went first to the house of Esteban Basilio as this one told me that he had two guns and one was left at his place which he had lent to me. When we reached the house of Esteban Basilio I with Esteban Basilio went up his house; he took his gun from an aparador inside the house, and delivered it to me, later we went down together and proceeded to walk towards the house of Teofilo Bungue in the barrio of Calsadang Bayu and Esteban Basilio, Felix Singian, Ely and Magelan were still with me. Before getting German Angeles we went first to a house second to the house of German Angeles, and the owner of this house is Eligio Singian, cousin of Felix Singian. Eligio Singian was in his house and we ate for lunch rice and pansit and those who ate with me were Felix Singian, Esteban Basilio, Ely, Magelan and myself, but Eligio Singian and his family did not eat with us although Eligio Singian was in the house when we arrived and while we were eating. After eating lunch in the house of Eligio Singian we saw German Angeles go down from his house in the direction of the house of Teofilo Bungue. He did not stay in the house of Teofilo Bungue and after having been there he went back to his house. A moment after he went up his house we saw German Angeles go down again and in the direction of "Mauli." As soon as we saw him go down the second time my companions who were Felix Singian, Esteban Basilio, Ely and Magelan and myself followed German Angeles. He was ahead probably about 15 meters (sucad soga) on the road. He passed by the store, and while German Angeles was drinking there Esteban Basilio approached him and told him that he wanted to talk to him. Upon hearing this German Angeles followed and all of us and German Angeles walked towards the rice field and when we reached the rice field and we were at a distance of about one half kilometer from the road, we tied the hands of German Angeles behind him. The thing that we used in tying German Angeles was a small abaca rope and was brought by Esteban Basilio, and those who tied him were Esteban Basilio himself and Felix Singian. After trying said German Angeles we proceeded walking towards Lara or towards Sapa. When we reached the dike of the stream German Angeles was released unaware by those who were accompanying him who were Esteban Basilio and Felix Singian. German Angeles then ran away and he went down into the stream at which he was shot by my companions, and what I did was to run to intercept German Angeles in his flight and inasmuch as I was very near already to German Angeles in trying to intercept him my companions hit me on the right side of the chest in shooting German. The moment I felt that I was hit I shot German twice, German was hit first on the left calf at the first shot of my revolver and on the second shot of my revolver German was hit on the left thigh and inasmuch as I was already dizzy and my vision was weakening on account of my being shot I fell on the ground and while this was happening my companions continued to shoot German Angeles until he was dead. The moment Magelan or Berting (Fernando Tolentino) saw me fall down this carried me with his two hands and

when I reached Calsadang Bayu they took me in a carromata to the Angeles Hospital, but inasmuch as this Hospital was closed they took me in an ambulance to Dau at the American Hospital and there Magelan left me. Those who cured me were American doctors staying perhaps two weeks in the hospital before being wholly cured because the bullet that hit me on the chest went thru my back.

"When we got to shooting German Angeles until he was killed there were other persons who went with us and when Magelan carried me to take me to the road in Calsadang Bayu to take me to the hospital in walking from the place where we killed German we met other persons, but I cannot remember at all these persons who went with us and whom we met. All of us together who killed German Angeles are all members of the PKM of the municipality of Porac, Pampanga. But I am only a private or soldier of the organization, but Magelan or Berting (Fernando Tolentino) I know that he is one of our leaders or heads, this Magelan has a Panaderia behind the municipal building of Angeles. Felix Singian and Ely are like myself privates in the organization, but I know that Esteban Basilio has a position and I do not know what it is."

After a careful review of the evidence in this case, we are satisfied that the findings of the trial court as regard the commission of the crime of murder resulting in the killing of the deceased German Angeles and the responsibility therefor of the herein appellants is adequately supported by the evidence. The facts in the case may be briefly stated as follows: In the month of January, 1945, Fernando Tolentino *alias* Magelan *alias* Berting was a leader of a Hukbalahap organization in Pampanga, particularly in the town of Porac, of which organization, appellant Pascual Ordoñez was one of the organizers, and his codefendant Jose de la Cruz was a member. Esteban Basilio held an important position in said Hukbalahap organization and Felix Singian and Ely were active members. In said month of January, Tolentino *alias* Magelan happened to see Pascual Ordoñez and he told him that he wanted Esteban Basilio *alias* Rusting to get or kidnap German Angeles, a foreman of the Santos family, because of a report, presumably unfavorable, about him received by Tolentino, and to transmit said order to Basilio. After a few days Ordoñez saw Basilio and he transmitted to him the order. As a member and organizer of the Hukbalahap organization Ordoñez knew and realized that when a man was kidnaped by the Huks, it meant death to said man, and Ordoñez in transmitting the order of Tolentino to Basilio realized its consequences to German. The afternoon following the transmittal of the order to Basilio the latter accompanied by Felix Singian and Ely came to the house of appellant Jose de la Cruz and told the latter that Fernando Tolentino wanted him to accompany them to some place, so he followed them to the house of Tolentino. From said house, Tolentino, Basilio, Felix Singian, Ely and De la Cruz, the first four all armed with revolvers went to Calzadang Bayu and because he, De la Cruz,

was unarmed Basilio went up his own house and gave him a gun of his which he took from his *aparador;* that they all proceeded to the house of Teofilo Bungue and from there they went to the house of Eligio Singian, a cousin of Felix Singian, where they had their lunch; that from said house they saw German Angeles go down from his house which was just next door, and walk to a nearby store where he had a drink; that the party followed him, Basilio approaching German Angeles and talking to him, after which, German Angeles followed all of them to a rice field about half kilometer off the road where the hands of German were tied by them particularly by Basilio and Felix Singian with an abaca rope that was carried by Basilio. With his hands tied behind him German was taken by the group toward Lara or Sapa, a stream but upon reaching the bank of said stream German who had somehow managed to untie his hands ran toward the stream in an effort to escape from his captors but the latter opened fire on him with their guns. De la Cruz ran after German to intercept and head him off but in getting too near German, he entered the line of fire and received a bullet wound in his chest, presumably from the gun of Basilio; that realizing that he was wounded, he, De la Cruz, fired two shots at German with his own gun, wounding him on the left calf and on the left thigh; that De la Cruz' companions continued shooting at German until he was dead; that because of his wound on the chest De la Cruz felt dizzy and fell to the ground and he was picked up by Tolentino and he was taken to the road; that from the scene of the shooting of German to the road De la Cruz and his companions met some persons who were ordered by Basilio to repair to the scene of the killing to inter the body of German; that once on the road, De la Cruz was carried in a calesa to Angeles and later to the American Hospital at Dau for treatment, where he stayed until he was fully recovered from his wound; that while riding in the calesa on their way to Angeles they were met and joined by Ordoñez who, seeing that De la Cruz was wounded, asked him what had happened and he was told that he had been accidentally hit by Esteban Basilio in connection with the killing of German Angeles.

The foregoing facts are, in great measure, based on the affidavits (Exhibits A–1 and B–1) made by Ordoñez and De la Cruz respectively and in their effort to destroy or neutralize the adverse and damaging effect of these two documents, the two affiants and appellants during the trial repudiated the same claiming that while under confinement they had been tortured and intimidated by the bodyguards of Fiscal Filemon Cajator into signing and thumbmarking said affidavits. The trial court who had an opportunity to gauge the veracity of the witness by observing their

demeanor on the witness stand, after considering the appellants' claim and after hearing the denial thereof by the persons who were in a position to know whether or not said affidavits were voluntary, such as Fiscal Cajator who conducted the investigation, questioned the appellants and had their statements reduced to writing, Mayor Serafin Buyson before whom the affidavits were read to the appellants and were sworn to and signed and thumbmarked by them, and municipal secretary Mateo Samaniego and policeman Francisco Mercado who acted as witnesses, rejected said claim and found that the two affidavits had been made freely, voluntarily and without the use of force or intimidation. We are reproducing with favor that portion of the decision of Judge Basilio Bautista on this point:

"Estas confesiones contienen el relato de los hechos que tuvieron lugar en el suceso de autos y confirman las circunstancias concurrentes y los testimonios prestados por Carlos Genuino y Francisco Marimla, y que las mismas, según la acusación, fueron hechas por dichos acusados libre y voluntariamente, por más que la defensa arguye que dichas confesiones fueron obtenidas mediante fuerza, intimidación y maltratos, y que por tanto no son admisibles como pruebas. Esta imputación ha sido negada rotudamente por el fiscal especial Sr. Filemón Cajator que hizo la investigación y por el Alcalde Municipal de Bacolor, Sr. Serafín Buyson, ante quien suscribieron y juraron dichas declaraciones de los acusados, y como también por los testigos instrumentales Mateo Samañego y Francisco Mercado, secretario y policía municipal, respectivamente, de Bacolor. El fiscal especial, Sr. Cajator, substancialmente dijo lo siguiente: después del arresto de los acusados Pascual Ordoñez y José de la Cruz en junio de 1946, fueron detenidos en la cárcel municipal de Bacolor y que más tarde fueron llevados a su oficina en Bacolor para ser investigados. En la investigación practicada por él a los acusados formulaba verbalmente sus preguntas y las contestaciones que daban los acusados las escribia a maquinilla su escribiente Lucio David Bognot, y una vez terminadas sus declaraciones los acusados fueron llevados al Alcalde Municipal para suscribirlas y jurarlas ante dicho Alcalde, y prestaron libre y voluntariamente sus declaraciones sin que haya mediado ninguna fuerza, amenaza, intimidación o maltrato de cualquiera clase antes y durante el tiempo en que se hacía la investigación, y en prueba de ello los acusados suscribieron y juraron sin protesta alguna sus declaraciones exhíbitos A y B. * * *

"En los affidavits A y B, Pascual Ordoñez y José de la Cruz, respectivamente, no admiten participación en la muerte actual de Germán Ángeles. Si es verdad, como así reclaman los acusados, que no han participado en la preparación de dichos exhíbitos y que sus firmas fueron obtenidas mediante violencia e intimidación, el fiscal especial, Sr. Cajator, hubiera hecho mejor haciendo aparecer en dichos documentos que los acusados Pascual Ordoñez y José de la Cruz han matado o muerto al occiso Germán Ángeles. Ciertamente, cualquiera que leyera estos documentos tendría la impresión y convicción después de que Pascual Ordoñez y José de la Cruz hayan dicho la verdad, y a juicio del Juzgado, los exhíbitos A y B fueron ejecutados libre y voluntariamente por los acusados Pascual Ordoñez y José de la Cruz respectivamente. Aun dado el caso de que fueron obtenidos mediante fuerza e intimidación, como afirman

los acusados, con todo dichos documentos son admisibles como pruebas porque los hechos relatados son confirmados por otras pruebas independientes. Por ejemplo, Pascual Ordoñez ordenó a Esteban Basilio a secuestrar a Germán Ángeles, y la muerte de éste después del secuestro. Por otra parte, José de la Cruz dijo que él, con Esteban Basilio y otros, secuestraron a Germán Angeles y le mataron después. Ambos acusados dijeron que José de la Cruz ha sido disparado y herido en la ocasión cuando mataron a Germán Ángeles y que ha sido llevado al hospital militar en el Campamento Dau. Estas admisiones son confirmadas por hechos independientes y extraños. Germán Ángeles, de hecho, ha muerto por heridas causadas por armas de fuego como aseguran Carlos Genuino y Francisco Marimla que ayudaron en el entierro de su cadáver, y José de la Cruz recibió un disparo en el pecho por cuyo motivo ha ingresado en el hospital militar del Campamento Dau. Su explicación en el banco testifical cuando declaró a su favor de que ha sido disparado por Esteban Basilio por haberse negado a participar en el secuestro de Germán Ángeles no merece crédito alguno, porque aunque ha sido nombrado después policía municipal de Porac, Pampanga, puesto que desempeñaba hasta el tiempo de su arresto, nunca ha tomado la acción e interés para llevar ante los tribunales de justicia a su ofensor. (Pages 9–13, decision of trial court)"

We are satisfied that Exhibits A and B were made freely and voluntarily by the defendants herein without the use of force or intimidation. If there had been any duress or maltreatment to induce the appellants to make the affidavits (Exhibits A and B), it is not explained why they failed to denounce said alleged torture and intimidation when they appeared before Mayor Serafin Buyson to ratify and subscribe the same. And, as well observed by the trial court, if the police authorities, including Fiscal Cajator really had a free hand in the preparation of these two affidavits and that they could include therein any damaging statement or admission regardless of the truth, and the wishes and conformity of the affiants, said affidavits would and should have been made much stronger and more conclusive against said affiants, establishing their conspiracy and participation in the killing of German Angeles in a more positive and direct manner. But, as it is in Exhibit A-1, all that Ordoñez admits was his transmittal of the order to kidnap, from Tolentino to Basilio and nothing more. Of course, in said affidavit he admitted that he was a Hukbalahap organizer, but this fact he also admitted in his testimony during the trial, saying that he was really a member and organizer in the Hukbalahap and PKM organizations and even sported an *alias* "Aladin." (T. s. n., pp. 109, 112, 117.) And as to Exhibit B-1, in it De la Cruz tried to minimize his participation in the killing by saying that he was unaware of the plan to kidnap and kill German; that when they started in their mission, he was not even provided with a gun until Basilio gave him one; that he merely accompanied the kidnaping group and that although he fired two shots at German Angeles, he hit him only in the leg, where a wound, ordinarily, cannot cause death.

In explaining the wound he received in his chest, contrary to the version in his affidavit (Exhibit B-1), De la Cruz stated during the trial that his wound was not accidental but that it was intentionally and criminally inflicted by Esteban Basilio behind the schoolhouse at Calzadang Bayu because De la Cruz refused to follow Basilio and his companions on their mission which he suspected was criminal. If this were true it is strange that when he had fully recovered from his wound and after peace and order had been restored in his town of Porac after liberation, and when he himself according to his own testimony during the trial, became a municipal policeman, he never took any step toward bringing Esteban Basilio to account and into court for shooting him and inflicting the serious wound in his chest that seriously jeopardized his life. And as a further argument against this theory of accidental wounding of De la Cruz, we have the testimony of Carlos Genuino, one of the two persons who had been ordered to dig the grave for the body of German Angeles to the effect that he was not far from the scene of the shooting and as a matter of fact, he heard the firing; that soon thereafter he saw Jose de la Cruz wounded and coming from the direction of the place from which he heard the shooting. This place he later verified when by order of Esteban Basilio, he went to that place and found the dead body of German Angeles with several fatal wounds on the chest and just below the jaw and also on the leg. This confirms the finding of the trial court that the wounding of De la Cruz took place at the scene of the killing of German Angeles and not behind some schoolhouse prior to the kidnaping of German.

In conclusion we are convinced of the guilt of the appellants. Now, as to the degree of their criminal responsibilities, we agree with the trial court that Jose de la Cruz is guilty as a principal. As to Pascual Ordoñez, we equally agree with the Solicitor General that he may well be regarded as a mere accomplice. In the language of article 18 of the Revised Penal Code he cooperated in the execution of the crime by a previous act, but one not necessary for its commission. In transmitting the order to kidnap by Tolentino to Basilio, although he may not have conspired and agreed with Tolentino on the plan to kidnap and liquidate German Angeles so as to make him a principal thru conspiracy, he knew and realized the meaning and invariable end of kidnaping a person by his Huk organization, and nevertheless, he transmitted the fatal message to kidnap German. As such accessory, he should be as he is hereby sentenced to not less than six (6) years and one (1) day of *prisión mayor* and not more than twelve (12) years and one (1) day of *reclusión temporal,* with the accessories of the law. The indemnity shall be paid by both appellants in the following manner and proportion. De la Cruz will

pay 1,200 and Ordoñez will pay ₱800, the two to be subsidiarily liable for each other's share (art. 110, Revised Penal Code; People *vs.* Barrera, 52 Phil., 113, 114). As thus modified, the decision appealed from, is hereby affirmed with costs against the appellants. So ordered.

Moran, C. J., Parás Feria, Pablo, Bengzon, Briones, and *Tuason, JJ.,* concur.

PERFECTO, *J.*, concurring:

We concur, but believe that the indemnity should be increased to ₱6,000 in accordance with the doctrine laid down in People *vs.* Amansec, L-927.

Judgment affirmed.

[No. L-2060. February 15, 1949]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* RUCILA AMIT Y BUENA, defendant and appellant

1. CRIMINAL PROCEDURE, RULES OF; NEW TRIAL ON ALLEGED GROUND OF "WORD DEAFNESS."—New trial will not be granted on alleged ground of mental disease technically known as "word deafness" if it is found that when the appellant committed the crime of qualified theft and when she entered a plea of guilty to the charge during the trial she was in her right senses and mentally sane, and far from claiming insanity or mental derangement she now positively asserts her sanity and responsibility.
2. CRIMINAL LAW; QUALIFIED THEFT; MILD BEHAVIOR DISORDER (MILD, POST-ENCEPHALITIC) AS MITIGATING CIRCUMSTANCE.—Mild behavior disorder as a consequence of illness the accused had in early life (probably, encephalitis), may be regarded as a mitigating circumstance under article 13, Revised Penal Code, either paragraph 9 or 10 thereof.

APPEAL from a judgment of the Court of First Instance of Manila. Peña, J.

The facts are stated in the opinion of the court.

Araceli Baviera for appellant.

Assistant Solicitor General Manuel P. Barcelona and *Solicitor Jesus A. Avanceña* for appellee.

MONTEMAYOR, *J.:*

The appellant Rucila Amit y Buena was accused of qualified theft in the Court of First Instance of Manila under the following information:

"That on or about the 21st day of December, 1947, in the City of Manila, Philippines, the said accused did then and there wilfully, unlawfully and feloniously, with intent of gain and without the knowledge and consent of the owner thereof, take, steal and carry away the following:

12 dress, assorted, valued at	₱170.00
3 chemises valued at	6.00
1 coat valued at	7.00

7 pantis valued at	15.00
1 bathing suit valued at	8.00
2 blouses valued at	10.00
1 kerchief valued at	2.00
5 handkerchief valued at	1.00
1 towel valued at	1.50
"Total	₱220.50

of the total value of ₱220.50, belonging to Enrique Esteban y Obando, to the damage and prejudice of said owner in the said sum of ₱220.50, Philippine currency.

"That the said accused acted with grave abuse of confidence in the commission of the said offense, she being at the time of the commission thereof a housegirl of the offended party and as such had free access to the stolen property."

At the arraignment she was assisted by a counsel and she pleaded guilty to the charge. Acting upon her plea of guilty the court found her guilty and sentenced her to not less than four (4) years, two (2) months and one (1) day of *prisión correccional* and not more than eight (8) years and (1) day of *prisión mayor* and to pay the costs. Inasmuch as the property stolen had been recovered, and returned to the owner, no pronouncement was made as to indemnity. Her counsel filed a motion for new trial on the ground that from the investigation and observation he had made he was of the opinion that Rucila was suffering from some mental disorder; that she had assured him that she was innocent of the charge of which she was found guilty and convicted; that she did not know why she entered the plea of guilty, and that if she was given an opportunity she could establish her innocence. Said motion was denied by the trial court and the case was brought here on appeal.

In his brief, appellant's counsel renews the motion for new trial, alleging in support thereof the same grounds mentioned in the motion filed in and denied by the trial court, adding that appellant is suffering from the mental disease technically known as "word deafness." The Solicitor General objected to the granting of the motion for new trial on the ground that said motion was not supported by any affidavit or certificate of any alienist about the appellant's mental disorder, either here or in the lower court. Because of the seriousness of the offense and the relatively severe penalty imposed in the decision appealed from, and because of the plea of guilty entered in the lower court, which does not entirely preclude the possibility that said plea may have been entered without full comprehension and realization of its consequences by one said to be not completely sane, and desiring to do full justice to the appellant, this Court issued a resolution on November 26, 1948 which reads as follows:

"Considering the fact that the sole ground of appeal in L–2060, People *vs.* Rucila Amit y Buena, is the failure and refusal of the

trial court to grant the motion for new trial founded on the mental state of the appellant at the time that she pleaded guilty upon arraignment; that in answer to the petition of appellant's counsel that she (appellant) said to be suffering from mental derangement, be transferred to the National Psychopathic Hospital 'for necessary and proper treatment,' the Solicitor General said that he would have no objection to said petition 'provided that the fact of defendant's mental alienation be ascertained by proper medical authority;' considering further the relatively severe penalty involved in this case, it is hereby ordered that the chief or Director of the National Psychopathic Hospital or any competent alienist designated by him, place the herein appellant under observation for a reasonable period of time, in order to verify the mental derangement, particularly the 'word deafness' from which she is supposed to be suffering, and if found to be suffering from said ailment, to determine how long she had been in that state,—if as far back as December 21, 1947, when the crime imputed to her was said to have been committed, or, on January 9, 1948, when she pleaded guilty upon arraignment, and to file a report with this Court at the earliest time possible. If it is necessary to transfer the appellant to said hospital in order to make the necessary observation, that may be done. Counsel for the appellant and the Solicitor General, particularly the latter, may render any aid, necessary in the transfer of said appellant to the hospital, and to the Director thereof in making his observation and preparing his report."

In pursuance to said resolution, the appellant Rucila was transferred from the Correctional Institution for Women where she was confined, to the National Psychopathic Hospital on December 18, 1948. In said hospital she was placed under observation by medical experts for about a month and the chief of said hospital has now filed the corresponding report dated January 24, 1949 signed by Dr. Cristeta V. Fulgencio, Chief Psychiatrist, Female Service, NPH, and Dr. Toribio Joson, Chief, Clinical Service, NPH. From said report which appears to be quite comprehensive and adequate we gather that although Rucila, born 26 years ago of poor parents, may have been a little unfortunate as regards family support, environment and opportunities for self-improvement, nevertheless, she was quite normal mentally, even bright and above the average in intelligence. In school she was accelerated one grade and she finished the sixth grade. But she was rather weak in character and morals and a little abnormal in behavior. Without the benefit of marriage she cohabited, first with a chauffeur from 1939 to 1943 when he abandoned her to marry another woman. Then she cohabited with a soldier by whom she had a child, but they separated in 1945 because of incompatibility. Thereafter, she met her first lover, and by him she had a child after whose birth he again left her. Instead of staying at home and attend to her children as a loving and dutiful mother, sometimes she would go and stay with some of her friends for a day or two. But mentally she was alert, smart and business minded, and engaged in buying and selling things, making profit therefrom. We are reproducing a portion of the report already mentioned so as to give better insight

and a more adequate comprehension of the character and mental condition of the appellant.

"Interview with this woman (Enriqueta Esteban) reveals that Rucila was hired as a housemaid by a member of the household (152 Isarog, Q C.) in December, 1947. The night she was hired (about midnight) Esteban was awakened by a police accompanying Rucila, who apparently left the house bringing a box of assorted dresses belonging to Esteban. The three went to the police station, where Rucila admitted that she took the clothes, which were all accounted for, and returned to the owner.

"A record of arrest of Rucila reveals that she was apprehended and arrested on the night of December 21, 1947 in front of 390 Blumentritt Street, that Rucila admitted having taken assorted clothings valued at ₱220.50, while the members of the household were asleep. Rucila admitted this also in a signed statement duly witnessed.

"Records of the arraignment of Rucila at the Court of 1st Instance in criminal case No. 5270 on January 9, 1947 reveals that Rucila who was duly represented by counsel entered a plea of guilty of having stolen, while being a housegirl of Enriqueta Esteban, personal property to the total value of ₱220.50, committed in the city on December 21, 1947. Rucila was sentenced to 4 years, 2 months, and one day of *prisión correccional* to 8 years and one day of *prisión mayor*. She was committed to the Correctional Institution for women on January 9, 1948.

"Records taken of the behavior of Rucila during her stay at the Correctional Institution from January 1948 to December 1948 reveals that Rucila had been behaving normally, that she was assigned to the different institutional activities, and she had been doing excellent work.

"Rucila was transferred to the National Psychopatic Hospital on Dec. 18, 1948.

MENTAL STATUS:

"On admission to the National Psychopatic Hospital, Rucila was well behaved, cooperative, coherent and relevant in her speech, well oriented in all spheres. No hallucinations or delusions elicited.

"During one-month period of observation in the hospital, Rucila had shown good behavior. She had always been cooperative, and observant of ward activities. At first the noise of the patients at night disturbed her sleep, but was able to adopt later. She is respectful to her personnel, and she attended to her needs and personal necessities. Her speech had always been coherent and relevant. She showed a fairly stable mood, and emotional reactions were adequate. There were no hallucinations or delusions, or reactions suggestive of bizzare trends. No compulsive or impulsive phenomena. She had always been well oriented in all spheres to date, place and person. She had always been in contact with the environment. Her memory is accurate and well preserved. She remembers all the incidents in her past life. She admits having been a housemaid to Enriqueta Esteban for a day, and that same night, December 20 or 21, 1947, she left the house taking with her a bundle of assorted dresses worth more than ₱200. That while walking along the streets, she was apprehended by a policeman, that she admitted to the policeman she took the clothings from the house of Esteban, where she worked as maid for that day only. That she was brought to the Bilibid Prison, and signed a written statement of her confession. Remembers she was kept at Bilibid till the day of her arraignment at Court of First Instance before Judge Peña, and there admitted her guilt also, and she was sentenced to prison for 4 years. Knows she was taken to the Correctional Institution for Women on January 9, 1948.

"She has a good grasp of common current events and her mind is alert to mathematical operations. She has a good insight and judgment. Says that she deserved punishment for her crime, although she thinks it is too long. She says she is not insane, and she prefers to finish her term in prison rather than to stay at the National Psychopathic Hospital and that she would not act insane as she was counselled to do, because in the first place she is not crazy and in the second place, she would not want to be given injections and treatments if she acted crazy.

"PHYSICAL AND NEUROLOGICAL STATUS

"There is a weakness of the external rectus of the right eye, resulting in convergent strabismus of same. There is no other abnormal physical or neurological findings.

"Laboratory examinations are essentially negative.

"CONCLUSIONS

"From the above studies and findings, the undersigned and members of the staff of the National Psychopathic Hospital are of the opinion that Rucila Amit y Buena is not psychotic and not suffering from 'word deafness.' That she was not psychotic, and did not suffer from "word deafness" during the commission of the crime on December 21, 1947, that she was not psychotic and did not suffer from 'word deafness' when she pleaded guilty upon arraignment on January 9, 1949.

"However, Rucila is suffering from a mild behavior disorder, as a consequence of the illness she had in early life, which most probably was encephalitis, as evidenced by the development of squinting of the right eye and the somewhat truant behavior.

"DIAGNOSE

"Without psychosis.

"Behavior disorder, mild, post-encephalitic."

From the foregoing it is safe to conclude that when the appellant committed the crime of qualified theft and when she entered a plea of guilty to the charge during the trial she was in her right senses and mentally sane. According to the report, far from claiming insanity or mental derangement she positively asserts her sanity and responsibility. Although she is mentally sane, we however, are inclined to extend our sympathy to the appellant because of her misfortunes and her weak character. According to the report she is suffering from a mild behavior disorder as a consequence of the illness she had in early life. We are willing to regard this as a mitigating circumstance under article 13, Revised Penal Code, either paragraph 9 or 10 thereof which read as follows:

"9. Such illness of the offender as would diminish the exercise of the will-power of the offender without however depriving him of consciousness of his acts.

"10. And, finally, any other circumstance of a similar nature and analogous to those above mentioned."

After the Court had voted to grant her the benefit of this mitigating circumstance, we received a recommendation from the Solicitor General, dated February 1, 1949, saying that in view of the report from the National Psychopathic Hospital—the same we have already alluded to,

he recommends that the appellant be accorded the benefits of article 13, paragraph 9 of the Revised Penal Code, a recommendation which fully supports the findings and conclusions of this Court on this point.

Together with the plea of guilty, appellant has two mitigating circumstances in her favor without aggravating circumstance to off-set them, and under article 64, paragraph 5 of the Revised Penal Code, we hereby impose the penalty next lower to that prescribed by law. The penalty corresponding to qualified theft involving more than ₱200 is *prisión mayor* in its medium and maximum degrees, according to article 309, paragraph 3 of the Revised Penal Code, in relation with article 310 of the same Code, as amended by Republic Act No. 120. The penalty next lower to it would be *prisión correccional* in its maximum degree to *prisión mayor* in its minimum degree. Applying the law on indeterminate sentence, the appellant is hereby sentenced to not less than one (1) year and one (1) day and not more than four (4) years, two (2) months and one (1) day of *prisión correccional*, with the accessories of the law. She will be credited with any preventive imprisonment she has already suffered. With this modification, the decision appealed from is hereby affirmed, with costs. So ordered.

Moran, C. J., Parás, Feria, Pablo, Perfecto, Bengzon, Brioncs, Tuason, and *Reyes, JJ.*, concur.

Judgment modified.

[No. L-2451. February 24, 1949]

JOSE M. TUMULAK, petitioner, *vs.* PROTOLICO EGAY, respondent

1. QUO WARRANTO; PUBLIC OFFICERS; LIMITATIONS OF ACTION; CASE AT BAR.—The petitioner's right of action, if any, accrued in July, 1946, when respondent allegedly usurped the office. From that day to August, 1948, more than one year has elapsed. The petition, therefore, may not be entertained.
2. ID.; ID.; ID.; APPLICABILITY TO OFFICERS WHOSE TENURE OF OFFICE IS PROTECTED BY CONSTITUTION.—Constitutional rights may be waived, and the inaction of the officer for one year could be validly considered as a waiver, *i. e.*, a renunciation which no principle of justice may prevent.
3. ID.; ID.; ID.—It is not proper that the title to public office should be subjected to continued uncertainty, and the people's interest requires that such right should be determined as speedily as practicable.

ORIGINAL ACTION in the Supreme Court. Quo Warranto.

The facts are stated in the opinion of the court.

Petitioner Tumulak in his own behalf.
Respondent Egay in his own behalf.

BENGZON, *J.:*

Through this quo warranto proceeding filed in August, 1948, the petitioner seeks to wrest from respondent the position of justice of the peace of the municipalities of Gigaquit and Bacuag, Province of Surigao. He alleges that in December, 1932, he became the duly appointed judge of said towns and acted accordingly until August, 1942, when the Japanese seized the province; that after the liberation, and in January, 1946, he received from President Sergio Osmeña an appointment *ad interim* for the same position; that in May, 1946, he duly qualified and assumed the office; that thereafter he went to Cebu to fetch his family, but upon returning he found the respondent Protolico Egay occupying the post beginning July, 1946; that he "had no other remedy" but to "accept the situation"; that in February, 1948, he was informed of the decision of this Court in Tavora *vs.* Gavina, L–1257; that thereafter and pursuant to said decision he asked the Department of Justice for reinstatement; and that, having failed to obtain relief, he instituted this litigation to vindicate his right to the office.

Required to answer, respondent submits a motion to dismiss the case, asserting that the action has lapsed because it was commenced more than one year after the cause of action had accrued.

The Rules provide that:

"SEC. 16. *Limitations.*—Nothing contained in this rule shall be construed * * * * * * * to authorize an action against an officer for his ouster from office unless the same be commenced within one year after the cause of such ouster, or the right of the plaintiff to hold office, arose; * * * * * * * *" (Rule 68, Rules of Court, page 139.)

There is no question that petitioner's right of action, if any, accrued in July, 1946, when respondent allegedly usurped the office. From that day to August, 1948, more than one year has elapsed. This petition is, therefore, out of time and may not be entertained. (Bautista *vs.* Fajardo, 38 Phil., 624; Abeto *vs.* Rodas, L–2041, November 3, 1948, 46 Off. Gaz., 930-938.)

During our deliberations, some doubt was expressed as to the validity of this period of limitation when it refers to officers whose tenure is protected by the Constitution. Reduced to its simplest terms, the position seems to be that a statute may not limit the period within which a constitutional right should be asserted or enforced before judicial tribunals. The statement, however, would, in effect, contradict settled doctrines and practices. For instance, the right to recover real property admittedly prescribes after ten years; yet nobody will deny that such right is verily protected by the Constitution. Con-

tracts are guaranteed by the Constitution; but none question the applicability of the statute of limitations to belated proceedings to enforce contractual obligations.

Furthermore, constitutional rights may certainly be waived,[1] and the inaction of the officer for one year could be validly considered as a waiver, *i.e.*, a renunciation which no principle of justice may prevent, he being at liberty to resign his position anytime he pleases.

And there is good justification for the limitation period: it is not proper that the title to public office should be subjected to continued uncertainty, and the people's interest requires that such right should be determined as speedily as practicable.

Remembering that the period fixed may not be procedural in nature, it is quite possible that some persons will question the validity of the "rule of court" on the point. However, it should be obvious that if we admit the inefficacy of the particular rule of court hereinbefore transcribed, the previous statute on the subject (Act 190, section 216)—equally providing for a one-year term—would automatically come into effect, and we return to where we started: one year has passed.

It is also suggested that according to Agcaoili *vs.* Suguitan,[2] the one-year period does not refer to public officers, but to corporations. In that litigation, it is true that the court, on this particular point, decided by a bare majority, the case for the petitioner on two grounds, namely, (*a*) the one-year period applies only to actions against corporations and not to actions against public officers and (*b*) even if it applied to officers, the period had not lapsed in view of the particular circumstances. However, upon a reconsideration this Court "modified" the decision "heretofore announced"[3] by limiting it to the second ground.

And thereafter—this is conclusive—this Court, with the concurrence of justices who had signed the original Agcaoili decision, expressly applied the one-year period in a quo warranto contest between two justices of the peace.[4]

Wherefore, the petition is dismissed, with costs. So ordered.

Moran, C. J., Parás, Pablo, Tuason, and *Montemayor, JJ.*, concur.

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[1] U. S. *vs.* Laranja, 21 Phil., 500; U. S. *vs.* Kilayco, 31 Phil., 371.

[2] 48 Phil., 676.

[3] 48 Phil., 707, 708.

[4] Lim *vs.* Yulo, 62 Phil., 161.

FERIA, *J.*, concurring and dissenting:

I concur in the dismissal of the petitioner's petition or action of *quo warranto* on the ground that it is barred by the statute of limitation specially provided in section 6, Rule 68, Rules of Court, taken substantially from sec-cause of action is barred by statute of limitation section tion 216 of Act No. 190, because the respondent has filed a motion to dismiss on the ground that the petitioner's (*e*) Rule 8 of the Rules of Court.

Had not the respondent filed a motion to dismiss on that ground, or alleged the statute of limitation as a defense in his answer in case he had not filed a motion to dismiss, this Court could not dismiss the petitioner's petition on said ground. Because, according to Sec. 10, Rule 9, "defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived, except the defense of failure to state a cause of action" and "that the court has no jurisdiction over the subject-matter." And bar of an action by the statute of limitation is one of said objection or defenses.

But I dissent from the decision in that, besides correctly citing the ruling of this Supreme Court in the case of Bautista *vs.* Fajardo, 38 Phil., 624, which is one of the several cases in which this Court has declared that the period of one year within which a petition for *quo warranto* must be filed, fixed by section 216 of Act No. 190 and reproduced in section 16, Rule 68, is a limitation of action as clearly stated in the caption of said sections 216 and 16, it also cites in support of the decision the case of Abeto *vs.* Rodas, L–2041, promulgated on November 3, 1948, 46 Off. Gaz., 930–938, in which it was held by the majority of the members of this Court that the said period of time is not a limitation of action, but a condition precedent or essential element of the petitioner's right of action. For in said case of Abeto *vs.* Rodas, this Court dismissed the petition of Judge Abeto because it was filed more than one year after his cause of action accrued, although the respondent Judge Rodas had not filed a motion to dismiss on the ground that Abeto's action is barred by the statute of limitation, nor an answer alleging the statute of limitation as a defense.

By citing the cases of Bautista *vs.* Fajardo and Abeto *vs.* Rodas at the same time, the decision seems to convey the idea that the period of time within which an action must be filed, may be considered indifferently either as a limitation of action or a condition precedent. We differ from that concept of two wholly different things in their nature and effects, as we have shown in our dissenting opinion in the aforementioned case of Abeto *vs.* Rodas,

which we have to reproduce below to support our conclusion:

"I strongly dissent from the decision of the majority.

"The pertinent provision of section 16, Rule 68, is substantially taken from section 216 those of the old Code of Civil Procedure, Act No. 190, as amended, which read as follows:

> " 'SEC. 216. *Limitations.*—Nothing herein contained shall authorize an action against a corporation for forfeiture of charter, unless the same be commenced within five years after the act complained of was done or committed; nor shall an action be brought against an officer to be ousted from his office unless within one year after the cause of such ouster, or the right to hold the office, arose.

"This Court in construing the above quote provisions in the case of Bautista *vs.* Fajardo (38 Phil., 624) quoted in the decision of the majority and the case of Agcaoili *vs.* Suguitan, 48 Phil., 697, has held that said section provides for limitation of an action of *quo warranto.*

"In the case of Bautista *vs.* Fajardo it was said:

> "* * * if a petitioner delays bringing his action, as in this case, for more than one year after his right to hold the office arises, the action is barred although the usurper or other person holding the office at the time of the institution of the proceeding to oust him may not himself have been in adverse possession for a full year."
>
> * * * * * * *
>
> " 'It cannot be supposed that the Legislature intended that the right to a public office, when dependent upon prescription, should be subject to continued uncertainty; and the public interest clearly requires that such right should be determined as speedily as practicable. It is evident that where the action to recover an office has once prescribed it cannot be revived by any change in the personality of the incumbent; and it cannot be admitted that a new right, different from that which he had previously possessed, accrued to the petitioner upon May 6, 1917, when the respondent was inducted into office. If the petitioner had any right it had existed at least from the beginning of the official term, and the prescription must be computed from the date.' (38 Phil., 627, 628.)

"And in the case of Agcaoili *vs.* Suguitan, this Court held:

> " 'In our opinion, even granting that section 216 is applicable to the appellant, the period of prescription had not begun to run at the time of the commencement of the present action. He was justified in delaying the commencement of his action until an answer to his protest had been made. He had a right to await the answer to his protest, in the confident belief that it would be resolved in his favor and that action would be unnecessary.' (48 Phil., 676, 697.)

The very caption of the above quoted provisions, and of section 16, Rule 68, plainly shows that it refers to "Limitation" of action. Second paragraph of Act 336 of the Code of Commerce which provides that:

> " 'The purchaser shall have a right of action against the vendor for defect in the quantity or quality of merchandise received in bales or packages, provided he brings his action

> within the four days following that of its receipt, and the damage is not due to fortuitous event, inherent defect of the thing, or fraud.'

has been construed by this Court, in the case of Ban Kiat & Co. *vs.* Atkins, Knoll & Co. (44 Phil., 12–13), to provide for limitation of actions, because it refers to the time for bringing an action, and therefore it was superseded by the statute of limitation contained in the old Code of Civil Procedure, according to this Court.

"The provisions of our law on *quo warranto* were taken from the laws or statutes in force in the States, and there is no statute or decision in the States of the Union which considers the time within which a special civil action of *quo warranto* as a condition precedent to the institution of the action. It has always been construed or established as a limitation of action (51 C. J., p. 330; 44 Am. Jur., p. 62).

"The limitation provided for in said section 16, Rule 68 applies not only to action against an officer for the ouster from office, whether a public office or an office in a private corporation, but also to actions against a corporation for forfeiture of charter, and against the person ousted for damages. It was substantially taken from sections 211 and 216 of old Code of Civil Procedure, and it can not have a different import from the latter's provisions, because this Supreme Court has no power under the Constitution to promulgate Rules providing for limitation of actions, as well as conditions precedent to the bringing of action, for they are not matters of procedure, pleading and practice, but of substantive law. Said section 211 provided that the person declared entitled to the office may, at any time within one year after the date of the judgment, bring an action against the person ousted and recover the damages sustained by reason of his usurpation; and section 216 prescribed that no action shall be brought against a corporation for forfeiture of charter, or against an officer to be ousted from his office unless within one year after the case of such ouster or the right to hold office arose. Besides, there is absolutely reason why the time within which such actions must be instituted should be considered as a condition precedent to the institution of an action or right of action.

"In the case of Sempio *vs.* Del Rosario, 44 Phil., 1, this Court construed the period of nine days as a condition precedent to or essential element of the right of legal redemption, because said period refers to the exercise of legal redemption and not to the institution of the action to redeem. That is, that the legal redemptioner in such case has, within that period, to exercise his right or make demand upon the purchaser of an adjacent rural estate with an area less than one hectare and offer the repurchase price, because if he does not do so he loses or waives his right of legal redemption. It the latter refuses to accept it, he may file the corresponding action at any time with the corresponding period of limitation provided by law. A substantive right may be exercised without necessity of instituting a judicial action against the one having the correlative obligation, unless the latter refuses or fails to perform it.

"The extinction of a substantive right must be distinguished from the bar by the statute of limitation of the action to enforce it. The right to institute an action may be barred by the statute of limitation, and yet the substantive right subsist, as shown by the fact that if the defense of prescription of action or statute of limitation is not set up, the plaintiff or the person having the right may enforce it may recover. But the extinction of a right carries necessarily with it the extinction of the corresponding right of action, as well stated by the late Chief Justice Arellano in the case of Domingo *vs.* Osorio (7 Phil., 405)."

PERFECTO, *J.*, dissenting:

We are of opinion that the petition should be granted, and so we vote.

To deny the petition because it was filed more than one year after the cause of action had accrued, by applying to that effect the limitation provided in Section 16 of Rule 68, Rules of Court, is a grievous error that should not be allowed unobjected to.

We are of opinion that section 16 of Rule 68 cannot impair judicial tenure of office as guaranteed by the Constitution, and our position in this respect has been explained in our opinion in the case of Abeto *vs.* Rodas, L–2041.

The argument by analogy as to constitutional guarantees of properties and contracts has no force. The constitutional guarantees as to properties and contracts are conditioned by due process of law, and prescription and the statute of limitations provided by law under which property and rights under a contract may be lost, satisfy the constitutional requirement of due process.

If applied to judicial tenure of office, section 16 of Rule 68 would not satisfy the guarantee of due process of law. As hinted in the majority decision, the one-year limit provided therein is based on the pressumption of waiver. That presumption cannot exist in the case of petitioner Tumulak. The fact that he has instituted the action in this case is a conclusive evidence that he has not renounced his right to continue occupying his judgeship. A presumption that an attitude has been adopted cannot prevail upon the reality that such attitude has never been adopted. A legal or technical presumption regarding a reality cannot prevail against the reality itself.

BRIONES, *M.*, disidente:

Estimo que el recurrente tiene derecho a ser repuesto en su cargo. No cabe alegar prescripción contra el recurso, porque el artículo 16, regla 68 de los tribunales, que trae su origen de los artículos 211 y 216 de la ley No. 190 (antiguo Código de Procedimiento Civil), se refiere solamente a oficiales o funcionarios de corporaciones particulares y no es aplicable a funcionarios públicos (Agcaoili *contra* Suguitan, 48 Jur. Fil., 717).

En el asunto citado se suscitó la misma cuestión planteada en el que nos ocupa. La Corte Suprema, en una sentencia de 6 contra 3, resolvió categóricamente que el artículo 216 del Código de Procedimiento Civil no era aplicable a funcionarios públicos sino sólo a los de corporaciones. No veo ninguna razón por qué se va a abrogar ahora una doctrina tan sana como la sentada en el referido asunto.

"* * * La regla de que las leyes de prescripción no obligan al rey (al Estado) o al pueblo, se aplica a procedimientos de *quo warranto*, siendo la regla la de que el representante del Estado puede presentar una querella a nombre del pueblo en cualquier tiempo; y el transcurso del tiempo no constituye impedimente alguno a las actuaciones, con arreglo a la máxima *púllum tempos occeurrit regi.* (Catlett *vs.* People, *ex rel.* State's attorney 151 Ill., 16.) El que el Estado pretenda que las leyes de prescripción no se aplican a él y sin embargo insista en que puede interponerlas para impedir un juicio de *quo warranto* entablado por uno de sus funcionarios públicos a quien el mismo ha privado de su cargo, nos parece injusto, inequitativo e irrezonable y no cae dentro de las reglas de sana jurisprudencia." (Agcaoili *contra* Suguitan, *supra*, p. 734.)

En la sentencia citada la Corte desarrolla el argumento de que tal como está redactado el artículo 216 de la ley No. 190 (la redacción del artículo 16, regla 68, del presente reglamento de los tribunales, es enteramente igual), no puede referirse en su segunda parte u oracion, que viene después de un punto y coma, más que a los oficiales de una corporación, puesto que la primera parte trata de la acción de *quo warranto* contra una corporación. He aquí el argumento que para mi sigue siendo tan inexpugnable como cuando se expuso por primera vez:

"Pero aun concediendo que el apelante queda obligado por las disposiciones del artículo 216[1] según aparece en inglés, ¿es dicho artículo aplicable al apelante? Consultando dicho artículo arriba citado en inglés, se verá que después de la palabra "committed" hay un punto y coma. ¿Lo que viene después del punto y coma se refiere acaso a la misma materia que le precede? Un punto y coma es una marca de puntuación gramatical, en el lenguaje inglés, para indicar una separación en la relación del pensamiento, un grado mayor que lo expresado por la coma, y lo que sigue al punto y coma debe tener relacion con la misma materia que le precede. *Lo que sigue a un punto y coma siempre tiene relacion con la misma materia de aquello que le precede.* Un punto y coma no se usa con el fin de introducir una nueva idea. Se usa el punto y coma con el fin de continuar la expresión de un pensamiento, un grado mayor que lo expresado por una mera coma. *Nunca se usa con el fin de*

1 * * * "Nothing herein contained shall authorize an action against a corporation for forfeiture of charter, unless the same be commenced within five years after the act complained of was done or committed; nor shall an action be brought against an officer to be ousted from his office unless within one year after the cause of such ouster, or the right to hold the office, arose."

"ART. 216. *De las limitaciones.*—Ninguna de estas disposiciones facultará la iniciación de un juicio contra una corporación por la pérdida de sus derechos de concesión, a menos que el juicio se lleve a efecto dentro de los cinco años siguientes a la comisión u omisión del hecho objeto de la acción. Tampoco se podrá iniciar un juicio *contra la persona que ejerza un cargo en una corporación* para desposeerla, a menos que se lleve a efecto dentro del año siguiente a la fecha de la comisión del hecho que dió motivo a su privación, o que puso en duda su derecho para ocupar el cargo."

(Tomo I, Leyes Públicas de las Islas Filipinas.)

introducir una nueva idea. Se usan la coma y el punto y coma ambos para un mismo fin, a saber, para dividir oraciones y partes de oraciones, con la única diferencia de que el punto y coma hace la división un poco más pronunciada que la coma. Siempre puede hacerse referencia a la puntuación en una ley con el fin de determinar el verdadero significado de una ley dudosa. Síguese por tanto que comoquiera que todas las disposiciones de dicho artículo 216 que preceden al punto y coma se refieren solamente a las corporaciones, lo que sigue a dicho punto y coma tiene referencia a la misma materia o a los *funcionarios de una corporacion.*"

El Magistrado Sr. Malcolm, en su opinión concurrente, desenvuelve el mismo argumento con claridad y vigor, si bien en forma más breve y condensada, a saber:

"(B) La acción del demandante no ha prescrito en virtud de las disposiciones del artículo 216 del Código de Procedimiento Civil. Ese artículo se contrae particularmente a una acción 'contra una corporación.' Más adelante, después de un punto y coma, viene esta cláusula 'tampoco se podrá iniciar un juicio contra la persona que ejerza un cargo,' que plenamente se retrotrae a 'corporación.' De otro modo, la nueva idea se hubiera expresado ya en un artículo separado, ya en una oración separada. Que esto es cierto lo corrobora, además, la traducción al castellano, haciendo uso de la frase 'la persona que ejerza un cargo en una corporación,' que tenemos el privilegio de consultar para explicar alguna ambigüedad en el texto en inglés." (Agcaoili *contra* Suguitan, *supra*, pp. 741, 742.)

Pero aun concediendo por un momento que la regla sobre prescripción es aplicable al recurrente, sostengo que el plazo de un año no debe contarse desde el mes de Julio de 1946 en que el recurrido comenzó a ocupar el cargo sino desde el 20 de Marzo de 1948, fecha de la comunicación del Secretario de Justicia en que se denegó la solicitud presentada por el recurrente para su reposición, o en todo caso desde que quedó firme la sentencia en el asunto de Tavora *contra* Gavina y Arciaga, L–1257 (45 Gac. Of., 1769, 1776). El presente recurso se registró en nuestra escribanía el 26 de Agosto de 1948; por tanto, muy dentro del plazo de un año señalado por la ley de prescripción, si el mismo se cuenta desde cualquiera de las dos últimas fechas.

Es preciso tener en cuenta que el presente caso así como el de Tavora y otros congéneres no son casos ordinarios de desposeimiento y usurpación, sino que han sido el resultado de una política básicamente errónea del Gobierno al considerar cesantes a los jueces de paz de la preguerra en virtud de la solución de continuidad causada por la ocupación japonesa. El caso de Tavora fué un "test case", un caso de prueba. El caso no era sólo de Tavora, sino de todos los jueces de paz colocados en la misma situación. Por tanto, en equidad y en justicia, el período de prescripción, suponiendo que existiera, tenía que quedar interrumpido para todos, hasta que el asunto se decidiese finalmente por este Tribunal Supremo. Es

aplicable al presente caso lo que el Magistrado Sr. Malcolm dijo en su citada opinión concurrente en el asunto de Agcaoili *contra* Suguitan, a saber:

"(C) Aun en el supuesto de que el artículo 216 del Código de Procedimiento Civil sea aplicable, aun no resulta claro que haya trascurrido un año 'siguiente a la fecha de la comisión del hecho que dió *motivo* a su prívación.' En realidad, no ha existido motivo alguno para la privación, puesto que fué una *interpretación errónea* de la ley, que fue *desaprobada* por el Tribunal Supremo, la que dió por resultado la tentativa de desposeer del cargo al Sr. Agcaoili, y de poner en posesión del cargo al Juez de Paz Auxiliar. Lo más que podría decirse de esa tentativa de desposeerle es que el Juez de Paz Auxiliar meramente se convirtió en juez de paz *de facto*." (Agcaoili *contra* Suguitan, *supra*, p. 742.)

Mi conclusión, por tanto, es que el recurrente es juez de paz *de jure* y tiene derecho a ser repuesto en su cargo. Usando la frase del Magistrado Sr. Malcolm, el recurrido no es más que un juez *de facto*.

Petition dismissed.

[No. L-1311. Febrero 25, 1949]

EL PUEBLO DE FILIPINAS, querellante y apelado, *contra* LEUTERIO CABRERA (*alias* TERIO), acusado y apelante

1. DERECHO PENAL; ROBO CON HOMICIDIO; PRUEBAS; CONFESIÓN REPUDIADA SÓLO POR EL ACUSADO.—No estando apoyada en ninguna otra prueba fuera de la declaración del apelante, no puede prevalecer sobre el testimonio positivo del juez de paz al efecto de que el apelante firmó voluntariamente la confesión en su presencia.
2. ID.; ID.; ID.; CONFESIÓN HECHA POR EL APELANTE CUANDO ESTUVO BAJO LA CUSTODIA DE UN POLICÍA.—La circunstancia de que el acusado y apelante estuviera bajo la custodia de un policía cuando hizo la confesión no la hace inadmisible, pues este hecho, por si solo, no demuestra que mediaron fuerza, amenaza e intimidación.

APELACIÓN contra una sentencia del Juzgado de Primera Instancia de Pampanga. Lucero, J.

Los hechos aparecen relacionados en la decisión del Tribunal.

D. José P. Osorio en representación del apelante.

El Procurador General Auxiliar Sr. Carmelino G. Alvendia y *Procurador Sr. Florencio Villamor* en representación del Gobierno.

BRIONES, *M.:*

Acusado de robo con homicidio juntamente con otros cinco individuos que durante la sustanciación del proceso todavía estaban sin capturar huyendo de la justicia, Leuterio Cabrera ha sido condenado por el Juzgado de Primera Instancia de la Pampanga a sufrir la pena de reclusión per-

petua con las accesorias de ley, a indemnizar a los herederos de la occisa Emiliana Silva Vda. de Policarpio en la suma de ₱1,275 y a Marciana Tayag en la cantidad de ₱3,549, sin prisión subsidiaria en caso de insolvencia, y a pagar las costas del juicio; con derecho a que se le acredite la mitad del período de su prisión preventiva. De la sentencia así dictada el acusado ha interpuesto la presente apelación.

En la causa han quedado satisfactoriamente probados los siguientes hechos:

En el barrio de Santo Rosario, municipio de Magalang, provincia de la Pampanga, vivían pacíficamente Emiliana Silva Vda. de Policarpio, de 64 años de edad, conocida popularmente en el lugar por Indang Milyang, juntamente con su nuera Marina D. Policarpio, los hijos de ésta, y otras dos personas llamadas Catalina Dizon y Emilio Pangilinan. En la noche de autos durmió en la casa de Indang Milyang una maestra de escuela llamada Marciana Tayag. Ambas mujeres habían convenido en ir juntas a la mañana siguiente, temprano, al pueblo de Mabalacat, de la misma provincia.

A eso de medianoche del 6 de Junio, 1946, los moradores de la casa se despertaron por insistentes llamadas desde abajo nombrando y buscando a Indang Milyang. Al propio tiempo se oyeron golpes producidos al parecer por culatazos en le puerta y ventana de la casa. Indang Milyang sentóse sobre su petate tendido en el piso, mientras que Marciana siguió acostada en su cama, a unos 4 metros de distancia. Marina D. Policarpio, la nuera de Indang Milyang, siguiendo instrucciones de ésta, encendió dos lamparillas de *paritan* y abrió la puerta. Acto seguido entró en la casa un individuo armado, acompañado de otros que se apostaron en la cocina, y acercándose a Milyang la intimó que le siguiera, pero Milyang se negó a seguir diciendo que no podía caminar. Entonces el individuo armado procedió a revolver los aparadores extrayendo la cantidad de ₱200 en dinero y ropa de Milyang avaluada en ₱700 que dicho individuo arrojó por la ventana recogiéndola sus compañeros. El mismo individuo se embolsó el contenido de un saco de mano perteneciente a Marciana Tayag, el cual contenido consistía en la suma de ₱3,039 en dinero efectivo, en un anillo de brillante avaluado en ₱100, y en una estilográfica marca *Eversharp* valorada en ₱10. Después de esto el mismo asaltante pidió las llaves de la tienda contigua a la casa, por lo que Marina abrió la tienda, de la cual aquél extrajo una pieza de tejido comunmente conocida por "fatigue" avaluada en ₱280, 3 sábanas valoradas en ₱30, 8 cartones de cigarrillos estimados en ₱40, y ₱25 en moneda fraccionaria, todo ello perteneciente a Indang Milyang.

Los forajidos se marcharon, pero poco tiempo después volvió a la casa otro individuo que resultó ser, según identificación hecha por los testigos, el apelante en esta causa. Leuterio Cabrera, e intimó a Milyang para que le siguiera, pero Milyang se negó otra vez a seguir, de cuyas resultas el apelante, enfurecido, le dió de puntapies. Milyang juntó las manos en actitud suplicante, pero el apelante, en vez de compadecerse de ella, la acribilló con un cuchillo de casa—8 heridas en total, una de ellas mortal, en el lado derecho—falleciendo de sus resultas la víctima. Esta carnicería fué presenciada por Marina y Marciana, que estaban sólo a 3 metros de distancia de la occisa.

A eso de un mes después de cometido el crimen, o sea el 15 de Julio, el acusado y apelante fué arrestado por la policía municipal de Magalang por sospechoso de ser Huk (organización de campesinos considerada como subversiva), pero fué luego puesto en libertad bajo *parole*. Sin embargo, fué de nuevo arrestado por la policía militar, en virtud de una información de que había participado en la matanza de Indang Milyang. El 1.º de Agosto se practicó la correspondiente investigación, durante la cual el apelante firmó una confesión escrita (Exhíbit B de la acusación) en la que da un relato detallado de cómo perpetraron el crimen él y sus coacusados. Esta confesión fué ratificada el 8 de Agosto ante el juez de paz de Magalang en presencia del capitán Sadang y sargento Rosillo del MPC, y del jefe de policía. Al leérsele la querella ante el juzgado de paz el 26 de Septiembre, el acusado se declaró culpable del delito de robo con homicidio (Exhíbit C de la prosecución).

El apelante repudia su confesión escrita diciendo que su firma fué obtenida por medio de amenazas, maltrato y violencia. Esta alegación carece de mérito. No estando apoyada en ninguna otra prueba fuera de la declaración del apelante, no puede prevalecer sobre el testimonio positivo del juez de paz al efecto de que el apelante firmó voluntariamente la confesión en su presencia. De ser verdad el maltrato y tortura a que, según él, le sometieron los policías, el momento para el apelante de denunciarlo fué cuando le llevaron ante el juez de paz. No lo hizo, sin embargo. Por el contrario, firmó la confesión sin ningún reparo.

Dos circunstancias llaman la atención en dicha confesión y, a nuestro juicio, demuestran que no fué obtenida por la policía mediante amenzas y violencia, a saber: (1) la profusión de detalles que solamente un partícipe en el crimen pudo haber dado; (2) el apelante imputa en esa confesión el acto de haber matado a Indang Milyang a su coacusado Rufino Maun que hasta ahora no ha sido aprehendido y es prófugo de la justicia. Tiene razón el Procurador General cuando arguye que, de haber me-

diado violencia, la policía le hubiese forzado a confesar que él fué el autor directo de la muerte y no le hubiese permitido atribuir ésta a otro que no estaba a disposición de los tribunales. Por último, el Juez sentenciador que vío y oyó declarar a los testigos asevera que el apelante no tiene las trazas ni la apariencia de un hombre pusilánime para que pudiera ser fácilmente amenazado, intimidado o acobardado por un simple sargento de la policía militar. No hemos hallado en autos ningún motivo para alterar o revocar esta conclusión de hecho del Juez. La circunstancia de que el acusado y apelante estuviera bajo la custodia de un policía cuando hizo la confesión no la hace inadmisible, pues este hecho, por si solo, no demuestra que mediaron fuerza, amenaza e intimidación (E. U. *contra* Castro, 23 Jur. Fil., 68; Rex *vs.* Thornton, 1 Moody, C. C. 28; Underhill on Crim. Procedure, 249.)

La confesión es tanto más digna de crédito cuanto que dos testigos presenciales han identificado positivamente al apelante: Marciana Tayag y Marina D. Policarpio, las cuales estaban sólo a 3 metros de distancia del asaltante y de su víctima. No había nada que obstruyese la vista de dichos testigos, y, además, había luces en la casa. Es aplicable a este caso lo que en otra ocasión hemos dicho al hablar de identificación en casos de súbito atraco como el presente. Hélo aquí:

"Según el denunciante, a pesar de no conocer de antemano al apelante, él pudo reconocerle o identificarle porque era claro el día y durante los breves momentos del atraco tuvo ocasión de fijarse bien en sus facciones, lo que no resulta extraordinario, pues una de las conocidas demostraciones en psicología experimental es que a veces en estos casos la víctima adquiere en su retina y memoria una fuerza retentiva desusada, como si los sentidos se aguijasen bajo la presión de la crisis psíquica" (People *vs.* Marquez, L–429, August 21, 1946, 43 Off. Gaz., 1652.)"

La defensa de coartada es completamente insostenible. Según el Juez sentenciador, los testigos sobre dicha defensa son indignos de crédito. No hay nada en autos que autorice o justifique una declaración en contrario.

En méritos de lo expuesto, se confirma la sentencia apelada con la sola modificación de que se condena al apelante a pagar una indemnización adicional de ₱2,000 a los herederos de la occisa; con las costas a cargo del apelante. Asi se ordena.

Moran, Pres., Parás, Feria, Pablo, Bengzon, y *Tuason, MM.,* están conformes.

PERFECTO, *M.:*

Al concurrir con esta decisión creemos, sin embargo, que la indemnización debe fijarse en ₱6,000, de acuerdo con la decisión en el asunto de Amansec, L–927.

Se confirma la sentencia.

[No. L-2337. February 26, 1949]

JULIAN SEGUNDO MANANTAN, MARIA A. VDA. DE TALAVERA, BEATRIZ TALAVERA MORALES, accompanied by her husband JESUS MORALES, and DELFIN B. FLORES, petitioners and appellants, *vs.* THE MUNICIPALITY OF LUNA, LA UNION, JOSE N. ANCHETA, Mayor, JOSE A. NUVAL, AMBROSIO ARIBON, HILARIO NAZAL, ROMUALDO MULATO, EULOGIO CASEN, CATALINA RESURRECCION, councilors, and TIMOTEO SANTAROMANA, respondents and appellees.

1. MUNICIPAL CORPORATIONS; MUNICIPAL RESOLUTION, DISAPPROVAL BY PROVINCIAL BOARD.—The only ground upon which a provincial board may declare any municipal resolution invalid is when such resolution is beyond the powers conferred upon the council making the same.
2. STATUTES; CONTEMPORANEOUS CONSTRUCTION.—It is a rule repeatedly followed by this court that the construction placed upon a law at the time by the officials in charge of enforcing it should be respected.
3. CONSTITUTIONAL LAW; IMPAIRMENT OF OBLIGATION AND CONTRACTS; MUNICIPAL CORPORATIONS; FISHERIES.—The contract of lease entered into under the authority of Resolution No. 37 between the petitioners and the municipal government of Luna granting petitioners the privilege of fishing within one section of the municipal waters, is a valid and binding contract, and as such it is protected by the Constitution and can not, therefore, be impaired by a subsequent resolution which sets it aside and grants the privilege to another party.

APPEAL from a judgment of the Court of First Instance of La Union. De Aquino, J.

The facts are stated in the opinion of the court.

Delfin B. Flores for petitioners.

Juan P. Aquino, Antonio G. Bautista and *Juvenal K. Guerrero* for respondents.

REYES, *J.:*

This is an appeal from a judgment of the Court of First Instance of La Union.

The facts are not disputed.

On December 15, 1945, the municipal council of Luna, Province of La Union, passed its Resolution No. 32, series of 1945, for the purpose of offering at public auction on January 15, 1946, a lease of the privilege to catch "bañgus" fry within a certain section of the municipal waters. The pertinent part of the resolution reads:

"RESOLVED FURTHER, That said lease should be paid in cash by the successful bidder and that the minimum bid is hereby fixed to the minimum price of One thousand pesos (₱1,000) for one year, beginning January 1, 1946 up to and including December 31, 1949; that said lease can be extended for a period of from one to four years, to be paid in cash or by yearly instalments as this council may deem it profitable for the best interest of the government of this municipality."

Acting on the authority granted in said resolution, the municipal treasurer issued the necessary notices for the auction wherein it was stated, among other things, that the fishing privilege in question would be leased "to the highest bidder ranging from ₱1,000 and up together with a deposit of 10 per cent of the amount so offered, for the period of one year from January 1, 1946, to December 31, 1946," with the further statement that "Bids for more than one year but not more than four years can be offered. Prospective bidders may see the Municipal Secretary about the conditions of the lease for more than one year."

The auction was held on the date specified, and, of the five bids submitted, that of Julian Segundo Manantan and his associates was declared to be the best and highest. In official confirmation of this declaration, the municipal council passed Resolution No. 37, series of 1946, granting to Julian Segundo Manantan and his associates the fishing privilege in question and authorizing the municipal mayor to execute the corresponding contract of lease. In due time the contract was signed by the parties, and, conformably to the bid, the lease was to be for four years (from 1946 to 1949, inclusive) at the agreed price of ₱1,000 for the first year, payable immediately, and ₱2,400 for the succeeding three years, payable in a lump sum at the beginning of 1947 or instalments at the discretion of the municipal council.

After paying the ₱1,000 corresponding to the first year of the lease, the lessees began catching "bañgus" fry within the fishery zone in question. But on July 20, 1946, the municipal council, now composed of a new set of councilors headed by a new mayor, passed, Resolution No. 2, series of 1946, requesting the Provincial Board of La Union to annul Resolution No. 32, series of 1945, and the fishing privilege granted thereunder to Julian Segundo Manantan and his partners, and the request having been granted, the said council, on December 22, 1946, approved Resolution No. 23, series of 1946, providing for the auctioning of the same fishing privilege for the year 1947 at the minimum price of ₱4,000. Upon learning of this proposed auction, Julian Segundo Manantan, later joined by his partners, commenced the present suit in the Court of First Instance of La Union to have the last-mentioned resolution declared void and the municipal council enjoined from carrying out the auction. The municipal council, however, went ahead with the auction and awarded the lease for the fishing privilege in question to Timoteo Santaromana, whose bid was declared to be the better of the two that were submitted. But the petitioners succeeded in having a writ of preliminary injunction issued on April 11, 1947, against the municipality, the municipal mayor, the municipal councilors, and Timoteo Santaromana, enjoining them and their agents from preventing

the petitioners from enjoying their privilege under the lease.

After trial, the Court of First Instance decided in favor of the respondents, holding Resolution No. 37, series of 1946, and the fishery lease contract granted thereunder to the petitioners to be null and void, and in consequence upholding the validity of the lease contract granted to Timoteo Santaromana and requiring the petitioners to account for the value of the "bañgus" fry caught by them from the date of the issuance of the preliminary injunction, less reasonable expenses.

From this decision, petitioners have appealed to this Court, contending that the lower court erred in holding Resolution No. 37 to be null and void, and in not declaring Resolution No. 23 null and void as violative of the constitutional provision prohibiting the passage of any law impairing the obligation of contracts.

It is obvious that the case hinges on the validity of Resolution No. 37 granting the fishing privilege to the petitioners. The learned trial judge rightly held that Resolution No. 32 (the one authorizing the first auction) was not invalidated by the fact that it was disapproved by the provincial board, since "the only ground upon which a provincial board may declare any municipal resolution * * * invalid is when such resolution * * * is beyond the powers conferred upon the council * * * making the same" (Gabriel *vs.* Provincial Board of Pampanga, 50 Phil., 686, 692), and there is no question that Resolution No. 32 is within the powers granted to municipal councils by the Fishery Law (section 67, Act No. 4003, as amended by Com. Act No. 471). His Honor, however, was in error in taking the view that Resolution No. 37 and the lease contract granted under it were null and void on the ground that when the municipal council by said resolution "accepted the four-year bid proposal of petitioners and declared them to (be) the best and highest bidders for the 1946-1947–1948–1949 fishing privilege, the municipal council in effect awarded to the petitioners the four-year fishing privilege without the intended benefits of public auction, in violation of section 69 of Act No. 4003, the Fishery Law, as amended by Commonwealth Act No. 471." The trial judge thus proceeds on the assumption that Resolution No. 32, which authorized the first auction, did not authorize a lease for more than one year, so that the notice of public auction calling for bids for a longer period was unauthorized and, therefore, void.

We don't think this assumption is justified by the terms of the resolution. It is true that the resolution fixes the minimum price for the lease at ₱1,000 for one year "beginning January 1, 1946, up to and including December 31, 1949." But nowhere does it say that the lease was to be

for one year only. On the contrary, it expressly provides that the lease "can be extended for a period of from one to four years," thus indicating an intention not to limit the duration of the lease to one year. In accord with that intention, the municipal treasurer, in announcing the public auction, inserted in the notice a provision that "bids for more than one year but not more than four years can be offered," and the same municipal council which passed the resolution (No. 32) confirmed that intention by entertaining and accepting in its Resolution No. 37 the petitioners' bid for four years. It is a rule repeatedly followed by this Court that "the construction placed upon a law at the time by the officials in charge of enforcing it should be respected." (*In re* Allen, 2 Phil., 630; Government of the Philippine Islands *vs.* Municipality of Binalonan, 32 Phil., 634; Molina *vs.* Rafferty, 37 Phil., 545; Madrigal and Paterno *vs.* Rafferty and Concepcion, 38 Phil., 414.)" (Guanio *vs.* Fernandez, 55 Phil., 814, 819.)

As that part of the notice issued by the municipal treasurer which calls for bids for a longer period than one year but not more than four years is in accord with the real intent of Resolution No. 32, as that intention was subsequently confirmed in Resolution No. 37 of the same municipal council, the said notice can not be deemed to be unauthorized and void, so that it is error to hold that the grant of the fishing privilege to the petitioners was null and void for lack of a valid notice of the public auction.

It results that the contract of lease entered into under the authority of Resolution No. 37 between the petitioners and the municipal government of Luna is a valid and binding contract, and as such it is protected by the Constitution and can not, therefore, be impaired by a subsequent resolution which sets it aside and grants the fishing privilege to another party.

Wherefore, the judgment appealed from is revoked and another one shall be entered declaring the contract entered into between the municipal government of Luna, Province of La Union and Julian Segundo Manantan and his associates under the authority of Resolution No. 32, series of 1945, and No. 37, series of 1946, to be valid; and Resolution No. 27, series of 1946, and the contract entered into thereunder between the same municipal government and Timoteo Santaromana to be void as violative of the constitutional provision against the impairment of the obligation of contracts. With costs against the appellees. So ordered.

Moran, C. J., Parás, Feria, Pablo, Perfecto, Bengzon, Briones, and *Tuason, JJ.,* concur.

Judgment ordered.

DECISIONS OF THE COURT OF APPEALS

[No. 2563–R. July 12, 1948]

DAVID P. JIMENEZ, protestant and appellee, *vs.* LINO ABUEG, protestee and appellant[1]

1. ELECTION LAW; EVIDENCE; COMPETENT EVIDENCE IN ELECTION CASES.—During the pendency of an election protest in the Court of First Instance, a corrosive substance was surreptitiously poured into a ballot box, as a result of which all the ballots were destroyed. However, the tally sheets escaped. These tally sheets are competent to prove that the election return for the precinct in question is false. (McCrary on Am. Law of Elec., 4th Ed., p. 371; 20 C. J., sec. 330, p. 242.) (*See:* Salvani *vs.* Garduño, 52 Phil., 678 Valenzuela *vs.* Carlos and Lopez de Jesus, 42 Phil., 428.) A more conclusive evidence of the falsification committed after preparation of election return is the certificate signed by the inspectors. This certificate is required by the Election Law to be furnished (sec. 153, Revised Election Code). (*See:* Dizon *vs.* Provincial Board of Canvassers of Laguna, 52 Phil., 47.)
2. ELECTION LAW AND PROCEDURE; PROTEST; ANSWER TO PROTEST; ALLEGATIONS REQUIRED IN ANSWER; SECTION 176, REVISED ELECTION CODE, CONSTRUED.—A consideration of the provisions of section 176 of the Revised Election Code, particularly the last portion of paragraph (*b*), readily discloses the apparent intention of the Legislature to limit the scope of the answer to the election precincts covered by the allegations of the protest, and the counter-protest to the precincts in which impugnation of the votes is made by the contestee. The law maker requires the contestee, if he claims valid votes in the precincts subject of the motion of protest, to state his claim *in his answer*, not in his counter-protest; and, if he claims irregularities *in other precincts*, he must allege these in his counter-protest. It is evident, therefore, that as precincts Nos. 2, 3, and 7 were the subject of the motion of protest, the contestee was in duty bound and had the right to make his allegation of alleged irregularities in his answer.
3. ID.; ID.; ALLEGATION OF IRREGULARITY IN A PRECINCT; DUTY OF THE COURT.—When an irregularity in a precinct is alleged and that certain valid ballots in favor of the party had been rejected and not counted for him, it is incumbent upon the court to examine all the registration lists, ballots, ballot boxes, and other documents used in the election. The procedure adopted by the trial court is, therefore, in accord with this ruling.

APPEAL from a judgment of the court of First Instance of Cavite. Alfonso, J.

The facts are stated in the opinion of the court.

Augusto de la Rosa and *Vicente Perrin* for appellant.
Antonio Barredo for appellee.

[1] See Resolution of the SC—G. R. No. L–2455 dated September 19, 1948. Petition for certiorari is dismissed on ground that the question raised therein are factual in nature.

LABRADOR, *J.*:

This is an appeal from a judgment of the Court of First Instance of Cavite declaring that in the last general elections the appellee, David P. Jimenez, obtained for the office of mayor of Rosario, Cavite a majority of 287 votes over the appellant Lino Abueg, and ordering the municipal board of canvassers of said municipality to amend its canvass accordingly and proclaim the appellee, the said David P. Jimenez, elected for the office of mayor of said municipality.

In the general elections of November 11, 1947, in the municipality of Rosario, Cavite, the municipal board of canvassers proclaimed Lino Abueg elected to the office of municipal mayor with 1,581 votes, as against David P. Jimenez with 1,579 votes. The motion of protest alleges that the following irregularities were committed:

(*a*) *Precinct No. 9.*—The election return was falsified by making it appear that Lino Abueg received 228 votes and David P. Jimenez 172 votes, when in truth and in fact the latter received 272 votes and Lino Abueg 99 votes;

(*b*) *Precinct No.* 2.—Fifty valid votes for David P. Jimenez were not credited to him but counted in favor of Lino Abueg;

(*c*) *Precinct No. 7.*—At least 50 votes for David P. Jimenez were not credited to him but were counted instead in favor of Lino Abueg; and

(*d*) *Precinct No. 3.*—At least 27 valid votes for David P. Jimenez were not counted in his favor.

Lino Abueg answered the motion of protest denying the alleged falsification of the election return in precinct No. 9 and all the other allegations as to the other precincts. With respect to precincts Nos. 2, 3, and 7, he further alleges that no less than 50 illegal votes in each of the precincts were counted as valid votes in favor of protestant David P. Jimenez, while not less than 50 ballots in every one of the precincts should have been counted and adjudicated as valid votes in his favor. He also filed a counter-protest alleging that in precincts Nos. 1, 4, 6, 8, and 10 not less than 50 illegal ballots in each precinct were counted as valid votes in favor of David P. Jimenez, while not less than 50 valid votes in each of said precincts, which are valid votes for him, were without any legal ground not counted in his favor.

Prior to the trial of the case, the court appointed commissioners to open the ballot boxes, examine their contents, and list the ballots found therein in favor of the parties in the case. They submitted reports of their findings, and the same have been introduced as evidence in the trial. After trial the court rendered judgment finding that the election return of precinct No. 9 has been falsified, and, in accordance with the tally sheets, that the protestant had

obtained a majority of 173 votes in said precinct. It further found that protestant David P. Jimenez obtained a total majority of 532 votes over the protestee in precincts Nos. 3, 5, 6, 8, 9, and 10, while the protestee Lino Abueg obtained that of 245 votes over his opponent in precincts Nos. 1, 2, 4, and 7, so that in all the ten precincts of the municipality the protestant obtained a majority of 287 votes over the protestee.

The first three assignments of error made on this appeal refer to precinct No. 9. It is contended that the lower court erred in declaring the election return of precinct No. 9 falsified and in basing the results of the election in said precinct on the tally sheets and not on the election return. In connection with this precinct, the record discloses that the ballot box was opened for the first time on December 10, 1947, and at that time it was found intact, but when, because of certain proceedings instituted in the Supreme Court, the revision of the ballots was to be made on January 8, 1948, it was found out that a corrosive substance had been spilled over and had destroyed the contents of most of the ballot boxes, although the tally sheets fortunately escaped destruction and were intact. According to the tally sheets and to the evidence submitted, the protestant David P. Jimenez obtained a total of 272 votes for the office of municipal mayor in said precinct, while the protestee obtained only 99 votes (Exhibits E and E–1). The election return, which appears to have been falsified, shows that the protestee obtained 228 votes, while the protestant received only 172 votes (Exhibit A–1). A simple examination of the election return readily shows that the original number of votes opposite the name of protestant David P. Jimenez is 272, but that the first digit 2 has been changed to 1. This number (272) also appears in pencil just after the name of the protestant. The return also shows that the number originally placed opposite the name of protestee Lino Abueg is 99, which is the same figure appearing in pencil just after his name, but this number has been changed to 298. The Nacionalista inspector on that precinct, Jose Guevarra, testified that the result of the counting of the votes in that precinct was that David P. Jimenez actually received 272 votes and Lino Abueg only 99 votes.

A duplicate original of the certificate of the result signed by the inspectors of the election (Exhibit A), which had been forwarded to the office of the Solicitor General (Exhibit B), shows that protestant David P. Jimenez obtained a total of 272 votes, while the protestee obtained only 99 votes.

In pursuance of the evidence, the lower court concluded that in said precinct No. 9 protestant David P. Jimenez actually received 272 votes, while the protestee received

only 99 votes. We can not find any merit in the contention of the appellant that under the circumstances the court should be bound by the election return, in view of the destruction of the ballots. If this connection were to be sustained, we would be giving sanction to the dirty trick perpetrated in court in the course of the trial, whereby the best evidence, the ballots themselves, were surreptitiously destroyed by pouring corrosive chemicals in the ballot box. We would also be violating a rule of evidence, which the wisdom of the ages has accepted as a safe and reliable source of ascertaining the truth, namely, the use of the next best evidence upon proof of loss of the originals. Were we to accept appellant's contention, we would be bound to accept the election return, which has been specifically alleged to have been falsified, and which was shown to have been so falsified, against all other evidence available. The citations made by appellant in his brief to support his contention may well be applicable to a board of canvassers, which must accept the election return on its face value, but can not certainly be applicable and binding on a court of justice, which is precisely entrusted with the solemn duty of finding the truth on an issue raised by the parties, which in this case is whether the election return is false or not.

The evidence relied upon by the court in arriving at the conclusion that the election return is false has been declared competent evidence in election cases. Thus, tally sheets, which are required by law to be kept in connection with the conduct of election, are admissible in evidence (McCrary on Am. Law of Elec., 4th Ed., p. 371; 20 C. J., sec. 330, p. 242). On the admissibility of tally sheets, McCrary states:

"The tally sheet kept by the officers of the election is competent evidence in an election contest to show the true state of the vote. It is good until impeached, and affords a *prima facie* evidence of the number of votes cast for each candidate * * *." (McCrary on Am. Law of Elec., 4th Ed., p. 371.)

There should also be no question about the competency of two of the inspectors who acted as witnessess in this case as to the tampering of the election return. They were eye-witnesses to the contents of the return at the time they signed it and they are, therefore, in a perfect position to declare in court whether the return has been tampered or not, or the figures appearing therein are those which originally were written thereon. Indeed, our Supreme Court in the case of Salvani *vs.* Garduño, 52 Phil., 678, laid down the policy that the court is no friend of artificial exclusionary rules of evidence. And in the case of Valenzuela *vs.* Carlos and Lopez de Jesus, 42 Phil., 428, the falsity of the return was proved only by circumstantial evidence, i.e., the unreasonably high number of persons

voting for governor in proportion to the number of votes cast for senators and representatives. Also in the case of Salvani *vs.* Garduño, the testimony of voters as to how they voted was competent to show that the returns have been falsified.

But the most conclusive evidence submitted in this case is the certificate, Exhibit B. This certificate is required by the election law to be furnished (section 153, Revised Election Code). In the case of Dizon *vs.* Provincial Board of Canvassers of Laguna, 52 Phil., 47, it was held that this certificate having been prepared according to the precepts of law and being so contemporaneous to the return, is entitled to weight.

We, therefore, find that the first three assignments of error are without merit.

The fourth error assigned refers to the denial by the court of the marking of the ballots objected to in precincts Nos. 2, 3, and 7 with a view to registering objections thereto. At the time of the trial, the court refused a petition of the protestee to mark the ballots on the ground that the alleged objections have not been made in the counter-protest. The protestee sought to justify the numbering of the ballots by the allegation contained in his answer to the effect that around 50 ballots in each of the three above-mentioned precincts, which should have been credited in favor of the protestee, were not so credited in his favor.

We believe that the contention of the appellant is well taken. Section 176 of the Revised Election Code provides, with respect to the answer to the protest and to the allegations of the counter-protest, as follows:

"SEC. 176.—* * *

"(*b*) The protestee shall answer the protest within five days after being summoned or, in case there has been no summon, from the date of his appearance and in all cases before the commencement of the hearing of the protest. *The answer shall deal only with the election in the precincts which are covered by the allegations of the protest.*

"(*c*) Should the protestee desire to impugn the votes received by the protestant in other precincts, he shall file a counter-protest within the same period fixed for the answer, serving a copy thereof upon the protestant by registered mail or by personal delivery or through the sheriff." * * * (Italics ours.)

A consideration of the provisions above-quoted, particularly the last portion of paragraph (*b*), readily discloses the apparent intention of the Legislature to limit the scope of the answer to the election precincts covered by the allegations of the protest, and the counter-protest to the precincts in which impugnation of the votes is made by the contestee. The law maker requires the contestee, if he claims valid votes in the precincts subject of the motion of portest, to state his claim *in his answer,* not in his

counter-protest; and, if he claims irregularities *in other precincts*, he must allege these in his counter-protest. It is evident, therefore, that as precincts Nos. 2, 3, and 7 were the subject of the motion of protest, the contestee was in duty bound and had the right to make his allegation of alleged irregularities in his answer. This he complied with, and we find that the court erred in this respect.

However, we agree with the appellee that the error is without any substantial prejudice to the rights of the appellant for the reason that the court actually conducted a revision of the ballots in all said precincts in the presence of the parties, numbering each and every one of the ballots, giving thereby opportunity to the appellant to register his objections. Besides, a revision has been made by this court, and the results thereof are as follows:

Precinct No. 2.—The election return for this precinct reports 230 votes for the protestee and 154 voted for the protestant. The commissioners report a total of 200 votes for the protestee and 166 votes for the protestant (Exhibit K). The trial court's revision produced the same result as that of the commissioners. Our revision has produced a very insignificant change. Two ballots, 109–J and 158–J, are improperly counted for protestee David P. Jimenez, because his name appears opposite the blank space for vice-mayor. One other ballot from among the unclaimed ballots, namely, 11–S, bears the name of protestee in the corresponding space for mayor and should have been counted for him. The total votes for each of the parties should, therefore, be 201 for the protestee and 164 for the protestant David P. Jimenez, or a majority of 37 votes for the protestee.

Precinct No. 3.—According to the revision made by the commissioners (Exhibit J), the protestant received 260 votes as against 47 votes for the protestee. According to the election return, as well as the tally sheets, the protestant received 261 votes and the protestee 47 votes. The court's revision produced the same result as that of the commissioners. In our revision, we have found that one ballot, 17–J, is incorrectly counted for the protestant. The latter's name appears in the blank space for member of the provincial board and can not be and should not be credited in his afvor. So that in this precinct the protestant's majority should be 212 instead of 213 votes.

Precinct No. 7.—The election return for this precinct reports 117 votes for the protestant and 222 votes for the protestee. The commissioners who conducted a revision of the ballots, after the same had been spilled over with a corrosive substance, which had destroyed in part the contents of the ballot box, produced as a result 118 votes for the protestant and 220 votes for the protestee. The court

below found in its revision the same result as that of the commissioners' (Exhibit G). We have only been able to make a partial revision, because the ballots in favor of the protestee appear to be in such a state of deterioration that they can not be separated from one another without falling apart in small pieces. We have, however, been able to examine all the ballots counted in favor of the protestant and we have found the number of votes credited in his favor both by the commissioners and by the court to be correct. We have also been able to look over the unclaimed ballots totalling 36, and have found that none of them can be credited in favor of the protestee.

It has been impossible to examine 184 ballots counted for the protestee, marked 1–A to 184–A, but as all of them have been credited both by the commissioners and by the court, no prejudice can be caused to the appellant by the impossibility of revision. The other 38 ballots bearing the name of the protestee have been carefully examined and we agree with both the trial court and the commissioners that one of them, ballot 1–A, should not be counted for the protestee, because his name appears only by his initials "L.A." (Sec. 149 [15], Revised Election Code). For the foregoing reasons no change can be made in the result of the revision conducted by the commissioners and by the trial court.

In the fifth assignment of error it is claimed that the trial court erred in crediting the protestant-appellee with 19 ballots, which were found in the red box of precinct No. 3. It is contended on behalf of the appellant that as the protestant did not include in his prayer a specific request for the opening of said box, the trial court should have denied the protestant's petition to open the red box. In answer to this contention the protestant argues that his allegation in his motion of protest, to the effect that 27 valid votes for him are not counted in his favor, was sufficient in justifying the trial court in opening the box of spoiled ballots, notwithstanding the objection of the protestee. The protestant's contention is well founded. This matter has already been decided expressly by the Supreme Court in the case of Balon *vs.* Moreno, 57 Phil., 60, 68, wherein it cited the case of De la Merced *vs.* Revilla and Camacho, 40 Phil., 190. It was held in that case that when an irregularity in a precinct is alleged and that certain valid ballots in favor of the party had been rejected and not counted for him, it is incumbent upon the court to examine all the registration lists, ballots, ballot boxes, and other documents used in the election. The procedure adopted by the trial court is, therefore, in accord with this ruling.

In the sixth assignment of error it is claimed that the lower court erred in not rejecting certain ballots in favor

of the counter-protestee which were objected to on various grounds by the counter-protestant. These ballots have been marked and presented as exhibits. We will now consider the objections by precinct, in the order in which the ballots are marked.

Precinct No. 1.—Thirteen ballots, Exhibits 4, 4–A to 4–L, are objected to on the ground that the name of the counter-protestee therein is not legible. The trial court found that all of the said ballots, except Exhibit 4–C, are legible. We find no error in the conclusion of the court.

Nine ballots, marked Exhibits 5, 5–A to 5–H, are objected to on the ground that they are marked, in that the first six are written in ink. We agree with the trial court that the mere fact that ballots are written in ink does not make them marked ballots subject to objection. We agree, therefore, with the trial court that all of said ballots should be counted in favor of the counter-protestee.

Twenty-three ballots, marked Exhibits 6, 6–A to 6–V, are objected to on the ground that they are written by the same hand. After examining the ballots one by one, we agree with the trial court that counter-protestant's claim is unfounded. All of them should be counted in favor of counter-protestee.

Seven ballots, marked Exhibits 7, 7–A to 7–F, are objected to on the ground that each of them has been written by two persons. A mere perusal shows that the objection is also without foundation; the same should be counted for the counter-protestee.

Precinct No. 4.—Four ballots, marked Exhibits 8, 8–A to 8–C, in this precinct are objected to on the ground that they are illegible. We agree with the finding of the trial court that, although one of them may have been misspelled, all of them are clearly legible, and that they should all be counted in favor of the counter-protestee.

Eight ballots, marked Exhibits 9, 9–A to 9–G, are objected to on the ground that they are marked. The last two are written in ink, but this fact does not make them marked ballots. The others bear erasures, but these do not seem to have been purposely made. The objection to them was, therefore, correctly overruled by the trial court.

Forty ballots, marked Exhibits 10, 10–A to 10–NN, are objected to on the ground that they have been written by the same hand. Many of them are written in print, but that does not necessarily follow that they are marked. Our revision fails to justify the objection; hence, they should all be counted for the counter-protestee.

Five ballots, marked Exhibits 11, 11–A to 11–D, are objected to on the ground that each of them was written by two persons. The court sustained the objection with respect to Exhibits 11 and 11–D, but admitted Exhibits 11–A, 11–B, and 11–C. We agree with the trial court that

the ballots do not show that each of these three is written by two persons.

Precinct No. 6.—Twenty-three ballots, marked Exhibits 12, 12–A to 12–V, are objected on the ground that they are marked. Many of them are written in ink, but as we have held, *supre,* the use of ink is not considered as a mark on the ballot. The ballots written in pencil have been examined one by one, and this court has found no marks that identify the ballots and render the objection thereto valid. We, therefore, agree with the trial court that all of said twenty-three ballots should be counted in favor of counter-protestee.

Six ballots, marked Exhibits 13, 13–A to 13–E, are objected to on the ground that each of them is written by different persons. We agree with the trial court that all of these ballots should be counted for the counter-protestee. While there may be differences in the way the letters in one ballot have been written, said differences do not appear to be attributable to different persons.

Two ballots, marked Exhibits 14 and 14–A, are objected to on the ground that the same are illegible. We agree with the trial court that the name of the counter-protestee therein is legible, and that the ballots were correctly counted for him.

One ballot, marked Exhibit 15, is objected to on the ground that it is prepared by two persons. We find that at least two names in the said ballot, which are written in a vertical style, appear to have been made by a firmer hand than the hand that wrote the others. We, therefore, rule that the trial court erred in admitting the said ballot as a vote for the counter-protestee.

Precinct No. 8.—Five ballots, marked Exhibits 16, 16–A to 16–D, are objected to on the ground that they are illegible. We agree with the trial court that the first four are legible, but we find that Exhibit 16–D is difficult to decipher, and if one does not know what the name of the candidate is, it would be difficult to say what it is. The trial court erred in accepting this ballot (Exhibit 16–D) as vote in favor of the counter-protestee.

Nine ballots, marked Exhibits 17, 17–A to 17–H, are objected to on the ground that they are marked. We have examined the ballots, and we agree with the trial court that the objection is founded on fact.

Seven ballots, marked Exhibits 18, 18–A to 18–F, are objected to on the ground that each of them has been written by different persons. The trial court sustained the objection to five of them, Exhibits 18, 18–A to 18–D, and overruled the objection to two, Exhibits 18–E and 18–F. We agree with the trial court that these last two ballots are not subject to the objection raised. They should be counted in favor of the counter-protestee.

Four ballots, marked Exhibits 19, 19–A to 19–C, are objected to on the ground that each of them has been prepared by two persons. We agree with the trial court that the objection is without foundation. So that the trial court correctly admitted them in favor of the counter-protestee.

Precinct No. 10.—Eight ballots, marked Exhibits 20, 20–A to 20–G, are objected to on the ground that they are marked. The trial court found that the same are not marked. We agree with this conclusion. It is true that in some spaces, which have been left blank, lines have been drawn; in some names have been crossed out; in one ink is used in filling the ballot; and in others certain erasures are made. We do not believe that the lines drawn or erasures, or the ink used, or the changes made in the ballots have been made intentionally to identify them. We agree, therefore, with the trial court that the objection to them should be overruled.

Seventeen ballots, marked Exhibits 21, 21–A to 21–P, are objected to on the ground that they are illegible. We agree with the trial court that the objection is not well founded. The mere fact that the name of the counter-protestee is misspelled does not necessarily mean that it is illegible. The trial court, therefore, correctly ruled to accept the same in favor of the counter-protestee.

Seven ballots, marked Exhibits 22, 22–A to 22–F, are objected to on the ground that they are written by more than one person. We do not find that this claim is borne out by the manner in which the ballots were prepared, and, therefore, find that the trial court made no error in adjudicating them in favor of the counter-protestee.

Four ballots, marked Exhibits 23, 23–A to 23–C, are objected to on the ground that each of them has been prepared by two persons. The trial court rejected these ballots. No appeal has been made by the counter-protestee against this ruling of the court.

A total of 12 ballots were rejected by the court *a quo*. To these we add 2, which have been erroneously admitted, thus making a total of 14 ballots. The total number of ballots objected to is 202, so the total number of votes adjudicated by the trial court in favor of the counter-protestee in precincts Nos. 1, 4, 6, 8, and 10 should be reduced by 2 votes.

From what we have set forth above, we find that the results of the revision made by the trial court in precincts Nos. 1, 4, 5, 7, 9, and 10 are correct. In the other precincts the following corrections should be made therein:

In precinct No. 2 the majority of protestee should be raised from 34 to 37 votes.

In precinct Nos. 3, 6, and 8 the majority of the protestant should be reduced by one vote in each precinct.

In resume we find that in precincts Nos. 1, 2, 4, and 7 the protestee obtained a majority of 248 votes, while in precincts Nos. 3, 5, 6, 8, 9, and 10 the protestant obtained a majority of 529 votes. So that in all the ten precincts of the municipality, the protestant David P. Jimenez obtained over the protestee a total majority of 281 votes, instead of 287 as found by the trial court.

For all the foregoing considerations, the judgment appealed from is hereby affirmed in *toto,* except with respect to the majority of the protestant and appellee, David P. Jimenez, over the protestee and appellant, Lino Abueg, which is hereby reduced from 287 to 281 votes. Costs shall be taxed against the appellant. So ordered.

Paredes and *Abad Santos, JJ.,* concur.

Judgment affirmed.

[No. 962–R. July 30, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* VICTORIO ABAYA Y PASCUA, defendant and appellant

EVIDENCE; JUDICIAL NOTICE OF THE FACT THAT CERTAIN ROUNDS OF AMMUNITION ARE USED ONLY FOR RIFLES.—This Court can take judicial notice of the fact that the 48 rounds of ammunition involved in the instant case, being of .30 caliber are used only for rifles, thus placing this case within the purview of the last part of the first paragraph of section 2692 of the Revised Administrative Code, as amended by Republic Act No. 4, which penalizes the illegal possesssion of a *"rifle, carbine,* * * *, or *ammunition exclusively intended for such weapons."*

APPEAL from a judgment of the court of First Instance of Manila. De Leon, J.

The facts are stated in the opinion of the court.

Luis Teodoro for appellant.

Assistant Solicitor General Barcelona and *Solicitor Umali* for appellee.

TORRES, *J.:*

This is an appeal from a judgment of the Court of First Instance of Manila which convicted the above-named accused of having illegally in his possession on October 16, 1946, 48 rounds of ammunition of caliber .30, in violation of section 2692 of the Revised Administrative Code, as finally amended by Republic Act No. 4, and sentenced him to imprisonment for one year, to pay the costs, with forfeiture of said rounds of ammunition.

It has been clearly established at the trial of this case, that on October 16, 1946, a squad of detectives of the Manila Police, headed by Sgt. Timoteo Mercado, visited Victorio Abaya y Pascua in his residence at No. 1739 Calle

Sulu, Manila, in connection with a case of robbery in which he was involved. After securing his permission to search his house, the officers of the law found in his room, in a corner behind a wardrobe, a *buri* bag which contained 40 rounds of .30 caliber ammunition in clips attached to an army belt. When questioned about it, the accused admitted to the detectives that he had no license to possess said ammunition and was keeping them as a souvenir.

From the outset, it should be stated that it has been well established, and the defense has not questioned, that Exhibit A, consisting of the 48 rounds of .30 caliber ammunition, contained in a *buri* bag, were found by the visiting detectives behind a wardrobe, inside the room of the accused and his mistress. Such fact leads to the conclusion that the accused was in possession and control of said Exhibit A, and his conviction should necessarily follow, unless he gave a satisfactory explanation of his possession and control of said Exhibit. Did he give such explanation?

Abaya tried to prove that Exhibit A was brought to his house by his friend, Mariano Cabrera, and that he did not know that the *buri* bag contained those rounds of ammunition. As regards the second part of his explanation, it appearing that the bag was not sealed, and assuming for the hence that said Exhibit was brought to his house by Mariano Cabrera, it is unbelievable that, even to satisfy his curiosity, he did not examine its contents.

With reference to his contention that Exhibit A was brought to his house by its owner, Mariano Cabrera, our examination of the evidence discloses that this witness has contradicted the testimony of the accused, because while Abaya in answer to a question of his counsel said that his friend, Mariano Cabrera, was the owner of Exhibit A (p. 7 of transcript), the latter, testifying for the defense, among other things, said "the truth of the matter is that I am not the owner of the ammunition, but a friend of mine, a soldier who, during the skirmish with the Japanese was shot." He further said that the dead soldier was Maximo Manatac. It will be seen, therefore, that this explanation of the accused being unreliable has not upset the theory of the prosecution in the premises (U. S. *vs.* Bondoc, 23 Phil., 14).

Much emphasis is given by counsel on the inadmissibility of the lone testimony of Sergeant Mercado to sustain the conviction of appellant of the offense under consideration. It is urged that the admission made by Abaya to the police officer regarding his possession of Exhibit A, not being in writing, could not be used as evidence against the person making the same. This argument lost its strength when this accused, questioned by his attorney, stated that it is true that he is the owner of the amunition. And even if appellant had not made such statement

in Court, the admissibility of the testimony of Sergeant Mercado in the premises is sanctioned by the Supreme Court in People *vs.* Bantagan (54 Phil., 834).

In view of the above, we are, therefore, satisfied that the lower Court did not commit any error in the premises.

The Solicitor General draws our attention to the fact that this Court can take judicial notice of the fact that the 48 rounds of ammunition being of .30 caliber, are used only for rifles. We agree with the public prosecution and thereby hold that the legal provision violated herein is that contained in the last part of the first paragraph of Section 2692 of the Revised Administrative Code, as amended by Republic Act No. 4, which reads:

"* * * If the article illegally possessed is a *rifle*, carbine, grease gun, bazooka, machine gun, submachine gun, hand grenade, bomb, artillery of any kind *or ammunition exclusively intended for such weapons*, such period of imprisonment shall be not less than five years nor more than ten years. A conviction under this section shall carry with it the forfeiture of the prohibited article or articles to the Philippine Government. * * *"

We, therefore, modify the imprisonment term imposed by the lower Court, and in accordance with the provisions of the Indeterminate Sentence Act (No. 4225), appellant is sentenced to an indeterminate penalty of not less than five (5) nor more than six (6) years of imprisonment. With such modification, the judgment appealed from is otherwise affirmed, with costs against appellant.

So ordered.

Endencia and *Felix, JJ., concur.*

Judgment modified.

[No. 973-R. August 2, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* BONIFACIO GABIOLA ET AL., accused and appellants

CRIMINAL LAW AND PROCEDURE; DISCHARGE OF "PARTICIPIS CRIMINIS" TO BECOME STATE WITNESS; FAILURE TO COMPLY WITH THE REQUISITES OF RULE 115, SECTION 9, RULES OF COURT; ITS EFFECT.—The discharge of a co-defendant to be used as a witness is *discretionary* in the trial court, his discretion to be guided by the provisions of Sec. 9, Rule 115. Even if it is proved after the termination of the case that said requisites have not been strictly complied with in the light of the facts brought out after the discharge, the testimony of the witness *does not become inadmissible* or valueless (U. S. *vs.* Abanzado, 37 Phil., 658).

APPEAL from a judgment of the court of First Instance of Misamis Occidental. Mañalac, J.

The facts are stated in the opinion of the court.

Leopoldo Picazo for appellants.

Assistant Solicitor-General Barcelona and *Solicitor De los Angeles* for appellee.

JUGO, *J.:*

Florentino Damonsong, Anacleto Flores, Bonifacio Gabiola, and Antonio Bagalanon, were accused before the Court of First Instance of Misamis Occidental of the crime of robbery with serious physical injuries. Damsonsong has never been arrested, so the trial proceeded with regard to Anacleto Flores, Bonifacio Gabiola, and Antonio Bagalanon. During the presentation of evidence for the prosecution, upon motion of the fiscal, the accused Anacleto Flores was discharged by the Court to be used as a witness for the prosecution. The trial continued its course with regard to the defendants Bonifacio Gabiola and Antonio Bagalanon.

After trial, Bagalanon and Gabiola were found guilty of the crime charged and each of them was sentenced to imprisonment of from four (4) years and two (2) months to ten (10) years and one (1) day, to return the articles taken by them or to indemnify the offended party in the sum of ₱203, and to pay the proportional part of the costs. From said judgment, both Bagalanon and Gabiola appealed.

On January 15, 1945, Bonifacio Gabiola, Antonio Bagalanon, and Florentino Damonsong visited Anacleto Flores in the house of the latter in barrio Lawaan, Aloran, Misamis Occidental, and took their luncheon there. After the luncheon, the three visitors planned to commit robbery in the house of Macario Cabahug, whom they believed to be wealthy. They asked Flores to join them, and the latter agreed.

In the evening of the same day, the four defendants proceeded to the house of Cabahug in Maular, Aloran, arriving there at midnight. Damonsong remained as an armed guard below the house, the other three entering it through a window. As their entrance created some noise, Cabahug was awakened. Thereupon Flores held him while Gabiola beat him with a thorny cane. Meanwhile Bagalanon made the lamplight brighter and began to search the house for valuable articles. Cabahug shouted to his son-in-law Marciano Aranas who was living in a house nearby. Aranas started to go to Cabahug's house to succor him, but Damonsong fired his rifle toward the house of Aranas, hitting a child in the leg.

Upon hearing the shot, the other defendants hastily seized a rattan suitcase and ran away. When they reached the provincial road, they opened the suitcase and found inside an apparatus for making soap valued at ₱150 and an irrigator worth ₱50. They left the suitcase (worth ₱3) near the fence of Aranas, carrying away the two articles above mentioned.

Cabahug suffered physical injuries caused by the beating of Gabiola, which required medical treatment for thirty-two days.

The appellants contend that the trial court erred in excluding from the prosecution the defendant Anacleto Flores to be used as a witness, alleging that the requisites provided for by section 9 of Rule 115 were not complied with. The discharge of a co-defendant to be used as a witness is discretionary in the trial court, his discretion to be guided by the provisions of section 9, Rule 115. It does not appear that the discharge was improperly made. However that may be, even if it should prove after the termination of the case that said requisites have not been strictly complied with in the light of the facts brought out after the discharge, the testimony of the witness does not become inadmissible or valueless (U. S. *vs.* Abanzado, 37 Phil., 658).

Counsel for the appellants urges that Bagalanon cannot be held responsible for the injuries caused by Gabiola, as Bagalanon did not take part in inflicting them. It should be noted that while Gabiola was beating Cabahug, Bagalanon made the lamplight brighter and searched for properties in the room. The beating of Cabahug by Gabiola helped Bagalanon in making the search, for otherwise Cabahug might have prevented him from doing so. In addition, it has been established that in the house of Flores, the defendants conspired to commit the robbery by forcible means, and for that purpose Damonsong was armed. In view, therefore, of the concerted action and the previous conspiracy between the defendants, Bagalanon is also responsible for the injuries inflicted by Gabiola upon Cabahug.

The appellants contend that on account of the old age of Cabahug, 104 years old, he was not able to recognize well the defendants. Although Cabahug was old, yet he was clearsighted enough to recognize the defendants; he positively identified Bagalanon and Gabiola by pointing at them. There was a strong lamplight in the room which was made brighter by Bagalanon.

With regard to the testimony of Flores, who was a discharged co-defendant, it should be considered that in important details his testimony is corroborated by other evidence, such as the firing of the gun by Damonsong and the finding of the suitcase containing the apparatus for making soap and the irrigator.

There is some contradiction between the testimony of Cabahug and Flores, due to the natural tendency of Flores to minimize his participation in the crime, but there is agreement in the essential details of the occurrence.

The defendants set up the defense of alibi, but it is untenable. Bagalanon corroborated his defense with the testimony of his mother, while Gabiola presented his *compadre* Miguel Abao. Abao could not remember the date when he saw Gabiola, and even Gabiola himself could not recall the day when he visited the barrio of Oroquieta,

where he said he was at the time of the commission of the crime. On the whole, the alleged alibi cannot counteract the positive and categorical evidence of the prosecution.

The Solicitor General correctly points out that the crime was committed with the aggravating circumstances of nighttime, dwelling, and unlawful entry. The penalty should, therefore, be imposed in its maximum degree.

As the suitcase valued at ₱3 has been recovered, said amount should be deducted from the indemnity.

In view of the foregoing, the maximum penalty imposed by the trial court is increased to twelve (12) years and one (1) day of *reclusión temporal*, and the indemnity is reduced to ₱200, without subsidiary imprisonment in case of insolvency. Thus modified, the judgment appealed from is affirmed in all other respects, with costs against the appellants. It is so ordered.

Gutierrez David and *De la Rosa, JJ.*, concur.

Judgment modified.

[No. 1883-R. August 12, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* ROMAN IRAN, defendant and appellant

CRIMINAL PROCEDURE; INFORMATION, SUFFICIENCY OF; EXACT LANGUAGE OF STATUTE NEED NOT BE FOLLOWED; CASE AT BAR.—The information in the case at bar alleges that the accused "willfully, unlawfully and criminally took and carried away one piece of timber belonging to E.E. * * * without the consent of the owner." These phrases charge the appellant's intention to profit by the possession of the timber, and describe the criminal act with sufficient clearness which undoubtedly appraised him of the charge imputed upon him. The information does not necessarily follow the exact language of the statute; it is enough that it sufficiently describes the crime as defined by law. (U.S. *vs.* Go Chanco, 23 Phil., 641.) There can be no better proof of criminal intent than the failure of the appellant to return the timber, notwithstanding his repeated promises to do so.

APPEAL from a judgment of the court of First Instance of Iloilo. Imperial Reyes, J.

The facts are stated in the opinion of the court.

Centeno & Gemarino for appellant.

Assistant Solicitor General Rosal and *Solicitor Alejandro* for appellee.

PAREDES, *J.:*

At about 6 o'clock in the morning of November 6, 1946, Eugenio Electores discovered that two pieces of timber, belonging to him, each measuring 16 x 12 x 14 meters, Bugo class, and worth ₱30, which he placed about a kilometer away from his house at *sitio* Tangcong, barrio Liber-

tad, municipality of Banate, Iloilo, disappeared. Following the traces produced by the timber, he found one of them covered with cogon grass at a spot near the land being plowed by Roman Iran. Electores sought the intervention of the barrio lieutenant, but the latter dared not to give him any help, alleging that appellant is a brave man and that it was very hard to deal with him. The next day, Electores reported the matter to Leo. A. Espinosa, chief of police of Banate who, accompanied by the offended party and a policeman, went to the place where the timber in question was seen. They found it was really there. The chief of police investigated the appellant who, not only did not claim ownership of the said timber which he admitted was under his control, but also promised to return it to the offended party. It was shown that at about 5 o'clock in the afternoon of November 5, 1946, appellant was seen immediately following the timber in question which was being dragged along by a carabao, with his minor son, Jose Iran, atop, driving from Tangcong towards Libertad where they resided.

The defense endeavored to prove that it was neither the appellant nor his son who hauled the lumber, but it was Amado Apura, who claimed during the trial to be the owner thereof; that said Apura took the said lumber from Monte Pare-pare and left it in the afternoon of November 5, 1946, on the land being plowed by the appellant; that on the following morning, November 6, 1946, Apura removed the same from said place to his home; that the said piece of lumber now forms part of Apura's house, and that the appellant on the three occasions he had been in the office of the chief of police had told the latter that the timber belonged to Apura who had always accompanied him there.

Upon this evidence, the lower court found the accused Roman Iran guilty of theft and, appreciating in his favor the mitigating circumstance of old age, without any aggravating circumstance to offset it, sentenced him to suffer one (1) month and one (1) day of *arresto mayor*, to indemnify the offended party in the sum of ₱30, with subsidiary imprisonment in case of insolvency and to pay the costs. In his appeal the accused claimed that the inferior court erred in finding him guilty of the crime of theft, although the element of intent of gain was neither alleged nor proven by the prosecution; and in convicting him, notwithstanding the insufficiency of the evidence.

The information alleges that the accused "willfully, unlawfully and criminally took and carried away one piece of timber belonging to Eugenio Electores * * * without the consent of the owner." These phrases charge the appellant's intention to profit by the possession of the timber, and describe the criminal act with sufficient clearness

which undoubtedly appraised the appellant of the charge imputed upon him. The information does not necessarily follow the exact language of the statute; it is enough that it sufficiently describes the crime as defined by law. (U. S. *vs.* Go Chanco, 23 Phil., 641.) There can be no better proof of criminal intent than the failure of the appellant to return the timber, notwithstanding his repeated promises to do so.

The claim of the defense that if there was any offense at all, it was committed by Jose Iran, is untenable, because the appellant was seen immediately following the timber in question as it was being dragged away by his son; and when the timber was found by the chief of police, appellant admitted that it was under his control and promised to return the same to its owner.

It is contended that the chief of police is biased for having testified that appellant in any of the three occasions he had been in his office, did not allege that the timber belonged to Apura. The chief of police declared that the appellant never told him that Apura was the owner of the timber and that the latter had not been in his office at all. The chief of police is a responsible public officer, and it had not been shown that he testified with a desire to favor the one or the other; in fact, he had given the appellant all the opportunity to return the timber, before filing the information. Considering the testimony of the chief of police to be trustworthy, the fact that Biliego is the son-in-law of Electores, and Apura is a cousin of the appellant, cannot alter the conclusions reached by this Court.

The contradiction alleged to have been committed by the prosecution witness Biliego in the sense that while in his affidavit Exhibit 2–A he stated that he saw the appellant committing the offense on November 10, 1946, in the court he testified that the crime took place in the afternoon of November 5, 1946, is more apparent than real. Biliego explained that when he declared during the investigation conducted by the chief of police, he mentioned the date to be November 5, 1946; that he did not write the statement; and that as soon as it was finished, he signed it. The explanation is satisfactory, for the date appearing on the affidavit might have been erroneously placed therein by the person who typewrote it. It is further alleged that according to the information and to the offended party's affidavit Exhibit 1, the theft took place on November 6, 1946, whereas at the trial it was shown to be on November 5, 1946. An examination of the information indicates that although the typewritten date was "6th day of November, 1946," nevertheless the same was corrected with ink and duly initialed, thus making it appear to be "5th day of November, 1946." A cursory reading of Exhibit 1 shows that the offended party did not state nor even imply

that his timber was taken on November 6, 1946, but that he came to know of the loss thereof for the first time, at about 6 o'clock in the morning of November 6, 1946. The discrepancy pointed out by the defense with respect to the measurement of the timber has no importance, considering that the dimensions given by the offended party, Biliego and the chief of police were mere calculations, as none of them appeared to have actually measured the timber. One fact, however, remains, and that is the timber in question was actually seen by the offended party while the same was in the custody of the appellant; that Biliego saw the timber at the time it was being pulled away by the appellant and his son, and that Biliego could not have been mistaken as to its identity, because long before the incident, the offended party sawed the timber after acquiring it from Falconery Tad-y.

The timber seen by the chief of police and the offended party on November 6, 1946, is different from the timber allegedly owned by Apura, which was left under the custody of the appellant early in the morning of November 6, 1946. This conclusion is inferred from the fact that the timber which Apura claimed to be his, already formed part of the flooring of his house long before the trial of the case, while the timber claimed by the offended party was still at the place where appellant had kept it even at the time of the trial.

The Court is fully convinced that the appellant Roman Iran is guilty of theft of one piece of timber, belonging to the offended party, Eugenio Electores; and, considering the presence of the mitigating circumstance of old age, sentences him to suffer one (1) month and one (1) day of *arresto mayor,* to indemnify the offended party in the sum of ₱15, with subsidiary imprisonment in case of insolvency. and to pay the costs. So ordered.

Labrador and *Reyes, JJ.,* concur.

Judgment modified.

[No. 1484–R. August 24, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* MELITON AQUINO, defendant and appellant

1. EVIDENCE; JUDICIAL NOTICE OF PERSISTENCE OF OLD NAMES OF PLACES IN THE CITY OF MANILA.—The court can take judicial notice of the fact that in the City of Manila, the old names of the places persist, and residents do not know or care to know the new names given to the streets.

2. ID.; DYING DECLARATION; CASE AT BAR.—The statement of the deceased to the Police Sergeant is a dying declaration for the reason that she was found bathed in her own blood and was lying down in her bed riddled with stab wounds when she

made the statement and she expired upon reaching the hospital. The seriousness of the wounds and the immediately supervening death are evidence of the state of her mind and of her belief in an impending death (People *vs.* Ancasan, 53 Phil., 779; People *vs.* Abedosa, 53 Phil., 788; Underhill's Criminal Evidence, p. 396, cited in Moran's Rules of Court, Vol. III, p. 293).

APPEAL from a judgment of the court of First Instance of Manila. De Leon, J.

The facts are stated in the opinion of the court.

Ramon B. de los Reyes for appellant.

Assistant Solicitor General Barcelona and *Solicitor Bautista* for appellee.

LABRADOR, *J.:*

This is an appeal from a judgment of the Court of First Instance of Manila finding Meliton Aquino y de los Santos, the appellant herein, guilty of homicide committed on the person of one Rosa Mendoza, and of less serious physical injuries inflicted upon the person of Gregoria Mendoza, and sentencing him for the first offense to an indeterminate penalty of not less than seven (7) years of *prisión mayor,* nor more than fourteen (14) years, eight (8) months, and one (1) day of *reclusión temporal,* with indemnification to the heirs of the deceased Rosa Mendoza in the amount of ₱2,000, and for the second offense to a penalty of six (6) months of *arresto mayor,* which penalties shall be served successively in the order of their severity.

The evidence submitted at the trial shows that on the first day of December, 1946, the spouses Pedro Villegas and Gregoria Mendoza were living at No. 2371 Juan Luna, Tondo, Manila, Mendoza's sister, Rosa Mendoza, also lived with them in the said house, in company with her common-law husband, the appellant herein, Meliton Aquino, and her three children, two by first marriage and one with the appellant. Both families retired to bed as usual on the evening of December 1, 1946, and their lights were put out. Villegas and Gregoria slept in the bedroom of the house, while the appellant and Rosa Mendoza and their children slept in the *sala.* Just after midnight, Villegas and his wife were awakened by a scream of pain (aray naku po) coming from the *sala.* The spouses recognized that it was the voice of Rosa Mendoza. Gregoria was the first to get up, intending to go to her sister's aid. But as she was going out, she was met at the door by a man, whom she did not then recognize, because the lights were out. The man assaulted her with a knife and was able to inflict some wounds on her person. Fortunately, Villegas, who also got up to give help, was able to come to his wife's aid in time, and because of his superior strength, he was able to stop the aggressor. In his attempt to wrest the knife

from the latter, the said knife broke in two. In this attempt Villegas was cut in the palm of the right hand, when he held the blade of the knife which the aggressor used in his attack. While Villegas was attempting to stop the aggressor, Gregoria was able to get an iron tube with which she hit the latter on the head, who thereupon fell down unconscious. Villegas and Gregoria forthwith held him, tied his hands, and dragged him to a corner of the room, where he was securely tied. When after this the lights were put on, the spouses found out that the aggressor was no other than the appellant herein, Meliton Aquino. They rushed to the living room, and they found Rosa in bed, lying in a pool of blood, which had flowed from the stab wounds that she had received. The spouses were then positive that as there was no other individual in the *sala* but the appellant and his common-law wife, it was the appellant who had stabbed her and inflicted the wounds.

Just then policeman began to arrive. Sergeant Gonzales, who was the first one to enter the house, immediately saw the two women lying on the floor still bleeding. He also saw the blade and the handle of the kitchen knife used in the aggression, and also noticed the appellant tied in one corner of the bedroom. Gonzales asked the appellant if he was the one who stabbed the women in the house, and he answered in the affirmative. He also asked him why he had done so, and the appellant answered that it was because his wife did not treat him right. Sergeant Gonzales was also able to ask Rosa Mendoza who had stabbed her, and she answered that it was her husband. At that time she was still alive, although groaning with pain. Gonzales took the wounded women to the jeep, together with Pedro Villegas, for the purpose of bringing them to the hospital for treatment, while the appellant was taken to police headquarters. Here, at three o'clock in the morning, the appellant was subjected to questioning, and the results are in the statement, Exhibit D. In this statement the appellant admits that he had stabbed his wife, because when he tried to come close to her, she laid his hand aside and told him to go away, upon hearing which he got furiously mad, took a knife beside a trunk, and stabbed his paramour; that thereupon she began to scream, and as the spouses in the neighboring bedroom come out of the door of their room, he also attacked them one after the other. In this affidavit he also admits that Gregoria Mendoza was able to hit him on the head with a piece of iron, and Pedro Villegas with his fists, and that it was the latter who tied him in the corner of the room.

Rosa Mendoza, the victim, died of her wounds upon reaching the North General Hospital. An autopsy performed on her body discloses three stab wounds in the left thorax, in the upper left lumber region, and in the epigas-

tric region, which had penetrated the lungs, the heart, and the liver. The cause of death was the shock and hemorrhage due to the multiple stab wounds (Exhibit C).

The appellant denies having committed the acts imputed to him by the witnesses for the prosecution, and claims that it was Pedro Villegas himself who had assaulted his common-law wife, as well as the latter's sister, after appellant had caught him in the act of coming out from the mosquito net over the bed of appellant and his wife. He further claims that the knife used in the stabbing was not his, or that it had ever been in his possession. The trial court gave no credence to this story of the appellant, and neither are we disposed to do so. It is impossible that Pedro Villegas could have assaulted first his sister-in-law and afterwards his own wife, there being no cause or reason for him to do so. On the other hand, all circumstances point out to the appellant alone as the only possible author of the death of his common-law wife. His motive is the one that he stated in his confession, i.e., the refusal of his common-law wife to accede to his desires and the feeling of jealousy caused thereby towards her and Pedro Villegas. Only this jealousy can explain the assault on his common-law wife, as well as on Pedro Villegas and his wife. Besides, being inherently improbable, appellant's claim is absolutely without corroboration, and is belied by the testimonies of Villegas and his wife, by the *ante mortem* declaration of his common-law wife made to Sergeant Gonzales when she was still alive, by his admission to the same Sergeant Gonzales immediately upon the discovery of the crime, and by his confession in the police station, Exhibit D.

Appellant's counsel argues that Pedro Villegas should not be believed, because he lied with respect to his residence; he and his wife did not actually see the stabbing of the deceased; there are inconsistencies in his testimony; the dying declaration is not admissible, and the kitchen knife was not sufficiently identified as belonging to the deceased.

We do not believe that Pedro Villegas lied when he said that he did not know the name of the street on which his house is located, except by the name Gagalangin. The court can take judicial notice of the fact that in the City of Manila, the old names of the places persist, and residents do not know or care to know the new names given to the streets. As to the claim that Villegas and his wife did not see the actual stabbing of Rosa Mendoza, this fact does not imply that Villegas and his wife lied, there being no other individual in the room at the time, except the appellant himself, and because soon after the scream of the deceased was heard, the appellant himself rushed towards the room of Villegas and his wife and assaulted

them. Neither do we find inconsistencies in the statements of Villegas and his wife, when at first they said that it was the appellant who stabbed Rosa Mendoza, and later said that they did not see the actual stabbing. Their testimony was an inference from the circumstances of time and place of stabbing. People know things not from seeing alone, but from hearing, and from a combination of incidents and events.

The statement of the deceased Rosa Mendoza to Sergeant Gonzales is a dying declaration for the reason that Rosa Mendoza was found bathed in her own blood and was lying down in her bed riddled with stab wounds when she made the statement to the police, and expired even upon reaching the hospital. The seriousness of the wounds and her subsequent death are evidence of the state of her mind and of the belief therein of impending death (People *vs.* Ancasan, 53 Phil., 779; People *vs.* Abedosa, 53 Phil., 788; Underhill's Criminal Evidence, p. 396, cited in Moran's Rules of Court, Vol. III, p. 293). The claim that the kitchen knife presented as evidence was not sufficiently identified is not supported by the evidence on record. Pedro Villegas identified it, and its parts were found in the very scene of the stabbing. Its broken condition is explained by the fact that Villegas wrested it from the appellant, and even the palm of his hand was wounded in his attempt to get it from the appellant.

Lastly, it is contended that there was no motive for the appellant to kill his common-law wife, because, according to Villegas himself, the appellant and his common-law wife were in good terms before the date of the incident. The motive is sufficiently proved by appellant's admission made to Sergeant Gonzales as soon as the crime was discovered and appellant's own confession in the police department, both of which sufficiently dovetail with the assault on the common-law wife and on Villegas and his wife. The assault first on the deceased and later on Villegas can be explained by no other reason than the jealousy aroused in him when his common-law wife refused to accede to his desires on the night in question.

For the foregoing considerations, we find that the judgment appealed from is fully justified by the evidence, and it is hereby affirmed, except in so far as the indemnity that the appellant should pay to the heirs of the deceased is concerned, which indemnity is hereby raised, in accordance with the recommendation of the Solicitor General, to the sum of ₱4,000. Costs against the appellant. So ordered.

Reyes and *Paredes, JJ.*, concur.

Judgment modified.

[No. 2162-R. August 28, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* TAN CHIN HING, defendant and appellant

CRIMINAL LAW; ILLEGAL POSSESSION OF "JUETENG" PARAPHERNALIA; CASE AT BAR.—In the case at bar, while it is true that the exhibits presented might indicate that *jueteng* games had taken place for some time prior to August 5, 1947, the prosecution has, however, failed to establish that they were being used in a game held or to be held on the date of the raid, or immediately prior to or after said date. In United States *vs.* Palma (4 Phil., 547), our Supreme Court held that proof that the game of *jueteng* has been played once in the house of a person is not sufficient to convict him of being the owner of, or maintaining, a gambling house. *Mutatis mutandis*, applying that principle to the case at bar, this Court holds that the fact that *jueteng* paraphernalia were found in a room under the apparent control of a person, does not necessarily mean that the latter was the owner or possessor thereof or maintainer of a *jueteng* game, in violation of article 195 of the Revised Penal Code, as amended (*see* also People *vs.* Diaz, G.R. No. 25550, December 2, 1926). Furthermore, the evidence on record is not clear as to whether the alleged *jueteng* paraphernalia are composed of jueteng tickets or lists (cotejos), that is, "paper or other matter containing letters, figures, signs or symbols which *pertain to or are in any manner used* in the game of *jueteng*" (Art. 195, No. 2-c, of the Revised Penal Code, as amended by Commonwealth Act No. 235). The journal books, notebooks, date stamper, stamp pad and the pieces of chalk do not pertain to or are *actually used*—like the tickets and lists (cotejos)—in the game proper, though they may be employed to record the results of the games, the dates of their celebration, etc.

APPEAL from a judgment of the court of First Instance of Manila. Amparo, J.

The facts are stated in the opinion of the court.

Jose V. Lesaca for appellant.

Assistant Solicitor General Torres and *Acting Solicitor Consing* for appellee.

TORRES, *Pres. J.:*

The above-named accused was charged by an assistant fiscal of the City of Manila with illegal possession of Chinese *jueteng* lists and after trial was found by the Court of First Instance of Manila guilty of having violated the provisions of paragraph 3 of article 195 of the Revised Penal Code as amended, and sentenced to an indeterminate penalty of not less than eight (8) months nor more than three (3) years of *prisión correccional*, with the accessories of the law and to pay the costs.

The defendant appealed and, in the brief filed in this Court, counsel makes various assignments of error allegedly committed by the trial judge in convicting Tan Chin Hing as stated above. But, in our opinion, all the points raised by counsel can be disposed of by us by de-

termining whether or not the existence of the *jueteng* lists and paraphernalia in the premises occupied by appellant on August 5, 1947, constituted illegal possession thereof, in violation of the pertinent provision of said article of the Revised Penal Code.

It is undisputed that when the squad of patrolman Amado raided said place on that date they found the following:

"* * * three journal books, two notebooks, two pieces of Manila paper, one cigar box containing pieces of papers, one date stamper, one stamp pad and several pieces of chalks."

According to the evidence, the ground floor of premises No. 905 Lavezares Street consisted of a barbershop and, at the rear thereof (Exhibit 1 and 2) there was a small room wherein the raiders found those paraphernalia (Exhibits A to G) which were identified by the witnesses for the prosecution as the very same objects which were gathered by them during said raid. The defense did not deny that those books, lists, papers, etc. were things which were used in the prohibited game of *jueteng,* but alleged that they were not the property of appellant; they belonged to a Chinaman named Guan Heng, who had left for China.

The prosecution put on the stand patrolman Chan Lugay, who being of Chinese-Filipino parentage, speaks the Chinese language and reads Chinese characters. He examined the exhibits of the prosecution and testified that they show that the game of *jueteng* was held on various dates *in the year 1947 from May 1st to July 23rd* (Exhibit B). The other exhibits likewise indicate that the game was held *in 1943 and 1944.* No proof was submitted by the prosecution that those games were held in the same place. Said witness found in those exhibits several names of Chinese persons, but none of them has any connection with the accused.

In the light of the above facts, considering that, according to the prosecution, the latest game of *jueteng* was held on the 23rd of July, 1947, that is, more than one month prior to the date of the raid conducted by the squad of patrolman Amado, and that said paraphernalia were found in a room accessible to many persons and was not a habitation of appellant, we cannot draw the conclusion that those exhibits of the prosecution constitute irrefutable proof that they were in the possession of this appellant in violation of the Revised Penal Code. While it is true that said exhibits might indicate that *jueteng* games had taken place for some time prior to August 5, 1947, the prosecution has, however, failed to establish that they were being used in a game held or to be held on the date of the raid, or immediately prior to or after said date. In the United States

vs. Palma (4 Phil., 547), our Supreme Court held that proof that the game of *jueteng* has been played once in the house of a person is not sufficient to convict him of being the owner of, or maintaining, a gambling house. *Mutatis mutandis,* applying that principle to the case at bar, we hold that the fact that *jueteng* paraphernalia were found in a room under the apparent control of a person, does not necessarily mean that the latter was the owner or possessor thereof or maintainer of a *jueteng* game, in violation of article 195 of the Revised Penal Code, as amended (See also People *vs.* Dias, G.R. No. 25550, December 2, 1926).

Furthermore, the evidence on record is not clear as to whether the alleged *jueteng* paraphernalia are composed of *jueteng* tickets or lists (*cotejos*), that is, "paper or other matter containing letters, figures, signs or symbols which *pertain to or are is any manner used* in the game of *jueteng*" (art. 195, No. 2-c, of the Revised Penal Code as amended by Com. Act No. 235). The journal books, notebooks, date stamper, stamp pad and the pieces of chalk do not pertain to or are *actually used*—like the tickets and lists (*cotejos*)—in the game proper, though they may be employed to record the results of the games, the dates of their celebration, etc. With regard to the two pieces of Manila paper and the cigar box containing pieces of papers, we are not satisfied from the evidence that they are the tickets or the lists known as the "cotejos" of said game.

In view of the foregoing, and with reversal of the judgment appealed from, we hereby acquit the appellant herein, with costs *de officio.* So ordered.

Endencia and *Felix, JJ.,* concur.

Judgment reversed, appellant acquitted.

[No. 1485–R. Aug. 30, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* RUPERTO PACATANG, defendant and appellant

1. CRIMINAL LAW; MURDER; MISTAKE IN THE IDENTITY OF THE VICTIM; CRIMINAL LIABILITY OF ASSAILANT.—The fact that the accused killed the deceased by mistake does not detract in the least from the criminal liability incurred by him when he accomplished the killing. He performed the act with deliberation, with intent. If follows, therefore, that he must take the consequences resulting from his voluntary act. His mistake as to the identity of his victim does not relieve him from criminal liability (U. S. *vs.* Caranto et al., 4 Phil., 256; U. S. *vs.* Manalinde, 14 Phil. 77).

2. ID.; ID.; NIGHTTIME NOT CONSIDERED AS AGGRAVATING CIRCUMSTANCE.—The circumstance of nighttime should not be considered independently, because the darkness of the night was not sought by appellant to facilitate the commission of the

offense (Art 14, No. 6, Rev. Penal Code) and this circumstance was only incidental to the occasion (See U. S. *vs.* Paraiso et al., 17 Phil., 143; People *vs.* Bumanlag, 56 Phil., 10; People *vs.* Balagtas, 40 Off. Gaz., [2 S], No. 5, p. 263).

APPEAL from a judgment of the Court of First Instance of Davao. Fernandez, J.

The facts are stated in the opinion of the court.

Ricardo P. Pongoy for appellant.

Assistant Solicitor General Kapunan, Jr. and *Solicitor Makasiar* for appellee.

TORRES, *Pres. J.:*

Ruperto Pacatang was arraigned before the Court of First Instance of Davao for the murder of Esteban Canque. He pleaded not guilty, and after trial was found guilty of said charge and, taking into consideration the mitigating circumstances of obfuscation and voluntary surrender, and the aggravating circumstances of having committed the crime at night, the Court sentenced him to an indeterminate penalty ranging from eight (8) years of *prisión mayor* to seventeen (17) years, four (4) months and one (1) day of *reclusión temporal,* with the accessories of the law, to indemnify the heirs of the deceased Esteban Canque in the sum of ₱2,000 without subsidiary imprisonment by reason of the nature of the main penalty, and to pay the costs of the proceedings.

He appealed, and in the brief filed in his behalf counsel makes the following assignment of error:

"The trial Court erred in finding the defendant and appellant herein guilty of the crime of murder, beyond reasonable doubt, and sentencing him to suffer an indeterminate penalty of 17 years, 4 months and 1 day as maximum, and 8 years as minimum with the accessories of the law, and to pay a fine of ₱2,000 without subsidiary imprisonment, and the cost of the proceedings, notwithstanding the facts proven and established during the trial to sustain said judgment of conviction."

We note that the above-quoted assignment of error says that: "The trial Court erred in finding the defendant and appellant herein guilty of the crime of murder, beyond reasonable doubt, and sentencing him to suffer an indeterminate penalty of * * *, *notwithstanding the facts proven and established during the trial to sustain said judgment of conviction.*" In spite of the equivocal expression used in the last sentence of the above-quoted assignment of error, We shall understand that counsel means to say that the evidence in this case does not warrant the conviction of this accused of the crime of murder. In effect, in his closing argument, counsel says the following:

"We respectfully submit that if defendant and appellant has committed any crime at all, it is only homicide with two mitigating

circumstances in his favor, that of obfuscation and voluntary surrender."

The record shows that at about seven thirty o'clock in the evening of February 13, 1947, in the barrio of Matina-Aplaya, City of Davao, while Ponce Corbin and Esteban Canque were busy putting in sacks the charcoal—which they, aided by Loreto Canque, had been making since the morning of that day—Ruperto Pacatang came down from his house, just a few meters away, stealthily approached Esteban Canque, whose back was towards this accused, and suddenly with a dagger stabbed said Esteban Canque, inflicting upon him, above his right hip, on the "right corto-vertebral angle" a penetrating wound which, notwithstanding the operation performed on the deceased he died about ten hours after his admission in the local hospital, due to the fact that the abdominal arteries were cut.

Defendant, testifying in his behalf, admitted that he killed Esteban Canque. He alleged, however, that he did it by mistake. He was after Fermin Daogdog, who had threatened to take revenge on him as stated, and does not detract in the least from the criminal liability incurred by him when he accomplished the killing. He performed the act with deliberation, with intent. It follows, therefore, that he must take the consequences resulting from his voluntary act. His mistake as to the identity of his victim does not relieve him from criminal liability. Thus, in U. S. *vs.* Caranto et al., (4 Phil., 256), wherein the accused was charged and tried for murder with premeditation, the Supreme Court reversed the finding of the trial Court as to the existence of the circumstance of premeditation, but held that appellants were none the less guilty of homicide although the accused did not have in mind the particular persons who were afterwards killed when they made the threats to kill them. In U. S. *vs.* Manalinde (14 Phil., 77), the accused made up his mind to kill two undetermined persons, the first whom he should meet on the way. Having thus put into execution said resolution, Moro Manalinde with a *kris* attacked two persons, one of whom died. Manalinde was prosecuted and convicted for murder, and upon appeal the Supreme Court held that the fact that the victim was not predetermined does not alter the nature, conditions, or circumstances of the crime, for the reason that "to cause the violent death of a human being, without any reasonable motive, is always punishable with a more or less great penalty, according to the nature of the concurrent circumstances."

The attendance of the circumstance of treachery which in this instance qualifies the murder of Esteban Canque has been very clearly proven; for it has been shown that appellant, without any warning to his victim, stealthily crept

from behind and stabbed the unsuspecting deceased who never noticed his assailant's presence until he was stabbed. We agree with the Solicitor General that the circumstance of nighttime should not be considered independently, because the darkness of the night was not sought by appellant to facilitate the commission of the offense (Article 14, No. 6, Revised Penal Code) and this circumstance was only incidental to the occasion (See U. S. *vs.* Paraiso et al., 17 Phil., 143; People *vs.* Bumanlag, 56 Phil., 10; People *vs.* Balagtas, 40 Off. Gaz., [2 S] No. 5, p. 263).

We cannot agree with the lower Court that the appellant is entitled to the consideration of the mitigating circumstance of having become obfuscated when he thought that his adversary Daogdog was wandering around his house during the darkness of night looking for a chance to carry out his threat. There is nothing in the record to show the nature of the threat made by Daogdog, much less that the latter had threatened the life of appellant. Under circumstances, we do not believe that the appreciation in favor of the accused of said mitigating circumstance would be justified.

In view of the above premises, we find this appellant guilty of the crime of murder qualified by treachery, with the mitigating circumstance of voluntary surrender held in his favor. The penalty imposed by the lower Court upon the defendant being in conformity with law and our findings in the case, the decision apealed from is hereby affirmed, with costs against appellant. So ordered.

Endencia and *Felix, JJ.*, concur.

Judgment affirmed.

[No. 2570-R. September 29, 1948]

ANA JAGUNAP, claimant and appellant, *vs.* The Heirs of PEDRO M. FLORES ET AL., defendants and appellees

SUMMARY SETTLEMENT OF ESTATE OF DECEASED PERSON; BOND, ITS LIABILITY; EXTENT OF LIABILITY OF SURETIES WHO EXECUTED THE BOND;—CASE AT BAR.—The undertaking or bond filed in these proceedings by the sureties which uses the words: "in the sum of not less than two hundred pesos" was made in pursuance of the order of the court directing the heirs of the decedent to file an undertaking of ₱200. The sureties were only required to post a bond in the sum of ₱200. Such being the case, the said sureties cannot be held responsible and be made to pay an amount in excesss of the sum of ₱200 provided by the order of the court as the bond is but a creature of said order. A contrary holding would be tantamount to admitting that the undertaking of the sureties had no maximum limit and that they intended to assume an obligation which might be greater than their capacity to pay, which seems to be preposterous. This is repugnant to the nature of the contract of guaranty entered into by the sureties when they executed said undertaking. They could be required to pay a lesser amount but

not a sum higher than that stipuated in their undertaking (Civil Code, arts. 1826 and 1827).

APPEAL from an order of the Court of First Instance of Iloilo. Makalintal, J.

The facts are stated in the opinion of the court.

G. Colez for appellant.
Gellada & Mirasol for appellees.

TORRES, *Pres. J.:*

The only question raised by appellant in this instance is that specified in her assignment of error, which reads:

"The lower court erred in ordering the bondsmen Sofronio Flores and Teodorico Gaten to pay to the claimant Ana Jagunap only the sum of ₱200 instead of the full admitted claim in the amount of ₱2,438.14 in accordance with the express term of the undertaking embodied in their bond."

The record on appeal discloses that on May 27, 1946, after hearing and after notice and publication as required by law, the Court of First Instance of Iloilo, upon petition of Perfecto V. Flores, issued in these special proceedings an order whereby under the provisions of section 2 in connection with those of section 3 of Rule 74, and upon the filing by the heirs designated therein of a bond in the sum of ₱200, the summary distribution of the sum of ₱2,422.55 and the interest thereon, belonging to the deceased Pedro M. Flores, who died intestate, was made as follows: one-half to the surviving spouse, and the other half, in equal shares to the five children of said deceased, all of legal age, and named Perfecto, Jose, Francisca, Amalia and Antonio surnamed V. Flores.

Pursuant to said order, on May 29, 1946, the heirs of Pedro M. Flores filed an undertaking for ₱200—the amount required by the court—and on June 29, 1946, a project of partition patterned after the terms of that order, whereby it is shown that those heirs had already received their respective shares of the estate, was submitted to the court. The record is silent as to the action taken by the court on said project of partition; at least, it does not appear clearly when it was approved by it.

In the meantime, on August 9, 1946, claimant Ana Jagunap, in her capacity as administratrix in the intestate proceedings of Margarita Gonzaga (Special Proceedings No. 2246, of the Court of First Instance of Iloilo), filed a claim against the estate of Pedro M. Flores and prayed that the project of partition submitted by the heirs in these proceedings be held in abeyance, until her claim be duly paid, on the ground that said Pedro Flores until his death was a receiver appointed by the court and his pending account shows a balance due the estate of said Margarita Gonzaga in the sum of ₱6,000. This motion was heard by the court on March 22, 1947. No objection was filed by

the heirs of Pedro M. Flores to the admission of Exhibits A and A–1 presented by Ana Jagunap in support of her prayer and, therefore, on April 10, 1947, the court issued an order granting the claim of Ana Jagunap against the estate of Pedro M. Flores, in the amount of ₱2,438.14, deposited with the Bank of the Philippine Islands as accounts of the receivership of said Pedro M. Flores.

On November 20, 1947, Ana Jagunap presented another motion in these proceedings stating, among other things, that in view of the fact that Sofronio Flores and Teodorico Gaton "have assumed an undertaking, on May 29, 1946, to answer for debts outstanding against the estate of Pedro M. Flores, which have not been paid, or to any heir or other person unduly deprived of his lawful participation payable in money in accordance with section 3, Rule 74, of the Rules of Court, whereby they have agreed to undertake that they are jointly and severally bound * * * to any person or entity in the sum of not less than ₱200, Philippine currency, for payment of any just claim presented against the said estate", she prayed that an order be issued by the court directing said sureties Sofronio Flores and Teodorico Gaton "to pay to said movant the amount of ₱2,438.14 to satisfy the claim of said Ana Jagunap.

Without opposition in writing from the heirs of Pedro M. Flores or from the sureties, the lower court on December 8, 1947, handed down an order which reads as follows:

"It appearing from the order of this Court dated May 27, 1946, that the bond required therein under Section 4, Rule 74 of the Rules of Court was fixed at ₱200, the bondsmen Sofronio Flores and Teodorico Gaton are hereby ordered to pay to the claimant Ana Jagunap the said sum, to be credited to her claim in the amount of ₱2,438.14, as admitted by this Court in its order of April 10, 1947."

It is from this order that claimant Ana Jagunap has brought this case before us on appeal. She claims that under the terms of the bond or undertaking filed by Sofronio Flores and Teodorico Gaton which, among other things, says that said bondsmen are jointly and severally bound unto the Government to the Commonwealth of the Philippines, or to any person or entity in the sum "of not less than ₱200, Philippine currency, condition for the payment of any just claim which may be filed under section 4 of Rule 74 of the Rules of Court," she is entitled to collect from said bondsmen the sum of her claim amounting to ₱2,438.14.

From the outset, we must take into consideration the fact that, according to the 5th paragraph of the order of May 27, 1946, which provided for the summary settlement of the intestate estate of the deceased Pedro M. Flores, the heirs designated therein were required to submit an undertaking of ₱200 (*una fianza de ₱200.*) This was accomplished by the heirs when on May 29, 1946, they filed in these proceedings an undertaking executed in the above-

named sum by Sofronio Flores and Teodorico Gaton as sureties.

It appears, however, that said undertaking uses the following words: "in the sum of not less than ₱200." The discrepancy between the wording used by the court in its order of May 27, 1946, and the undertaking submitted by the heirs on May 29, 1946, is responsible for the attitude of claimant and appellant who contends that the sureties Sofronio Flores and Teodorico Gaton are liable to pay an amount of not only ₱200, but a much higher sum equivalent to the amount of her claim—₱2,438.14.

The undertaking or bond filed in these proceedings by said sureties is, after all, only a creature of the order issued by the court on May 27, 1946. Said order directed that upon filing by the above-mentioned heirs of an undertaking of ₱200 (*previa prestación por los herederos arriba nombrados de una fianza de ₱200*), the sum of ₱2,422.55, plus interests, from the estate of the late Pedro M. Flores be summarily distributed among his heirs. The sureties were only required to post a bond in the sum of ₱200, and they were not obliged to bind themselves for a greater amount.

Such being the case we believe that said sureties cannot be held responsible and be made to pay an amount in excess of the sum of ₱200 provided by the order of the court. A contrary holding would be tantamount to admitting that the undertaking of the sureties had no maximum limit and that they intended to assume an obligation which might be greater than their capacity to pay, which seems to be preposterous. This is repugnant to the nature of the contract of guaranty entered into by the sureties when they executed said undertaking. They could be required to pay a lesser amount but not a sum higher than that stipulated in their undertaking (Civil Code, articles 1826 and 1827).

Apparently, the undertaking submitted by the sureties was copied from a form used by the Court, which in view of our findings is evidently not in accord with the order appealed from.

In view of the above premises, and since we are of the opinion that the lower court did not commit the error assigned by appellant, the order appealed from is hereby affirmed. Appellant shall pay the costs. So ordered.

Endencia and *Felix, JJ.*, concur.

Judgment affirmed.

[No. 3012-R. October 21, 1948]

HOSPICIO A. PACAL, protestant and appellant, *vs.* AGATON N. COSUCO, protestee and appellee

1. ELECTORAL LAW; PROTEST; ANSWER TO PROTEST IS NEITHER MANDATORY NOR JURISDICTIONAL.—The provision to the effect that the answer should be filed within five days from the receipt of

the summons is neither mandatory nor jurisdictional. This can be clearly inferred from the very provisions of the Election Code, section 176, subsections (*b*), (*c*) and (*e*), under which a protestee shall answer: (1) within five days after being summoned; or (2) in case there has been no summons, from the date of his appearance; or (3) in all cases before the commencement of the hearing, and if no answer shall have been filed to the protest, a general denial shall be deemed to have been entered by the protestee. The procedure in election cases as formulated in the new Election Code as well as in the previous legal provisions on the same matter shows that election contests are not to be conducted upon "pleadings or by action" because the purpose of the law is to "free the courts as far as possible from the technicalities incident to ordinary proceedings and to enable justice to be administered speedily and without complications" (Lucero *vs.* De Guzman, 45 Phil., 852). In election cases the primary aim of the courts is to carry out the will of the electorate as expressed in the ballots (Cecilio *vs.* Tomacruz, 62 Phil., 689). "The institution of popular suffrage is one of public interest and not a private interest of candidates" 20 Corpus Juris, 227).

2. ID.; ID.; ID.; ALLEGATION OF IRREGULARITIES IN ANSWER, EFFECT; CASE AT BAR.—The answer filed by the protestee in the case at bar is not a counter protest wherein the votes received by the protestant in other precincts are impugned. It merely alleges that if irregularities, illegalities and frauds were committed in the very precincts specified in the protest, the same were committed in favor of the protestant and consisted in the rejection of valid votes cast in favor of the protestee and in the adjudication to the protestant of ballots wherein he did not appear clearly voted. Even if the answer of the protestee were a real counter protest, inasmuch as the irregularities therein alleged were committed in the very precincts involved in the protest, the trial court acquired jurisdiction to revise the contents of the ballot boxes in said precincts and to pass upon the validity of the votes cast therein. Whether the answer to the counter protest was filed out of the time or not is of no consequence. (See: Dacuycuy *vs.* Enriquez, 40 Off. Gaz. No. 8 [Aug. 23, 1941], 4th Supp. p. 95).

3. ID.; ID.; COURT, ITS POWER TO EXAMINE BALLOTS.—Once the ballot boxes are opened, it is the duty of the trial court to examine all their contents and to adjudicate the valid votes found therein to either one of the candidates. Considerations of public policy demand that the ballots should be accepted as the best proof once the truth concerning an election is made accessible through the opening of the ballot boxes. Thus, the trial court is empowered to examine the ballots and to determine which are legal and which are illegal even when neither of the parties has raised any question as to their illegality.

APPEAL from a judgment of the Court of First Instance of Mindoro. Santiago, J.

The facts are stated in the opinion of the court.

Luna, Leido, Valencia & Bleza for appellant.
Raul T. Leuterio and *Manuel S. Caba* for appellee.

GUTIERREZ DAVID, *J.:*

In the general election held on November 11, 1947, protestant and appellant Hospicio A. Pacal and protestee and

appellee Agaton N. Cosuco were the only candidates for the office of municipal mayor of the municipality of Mamburao, Province of Mindoro.

After the voting and on November 14, 1947, the corresponding Municipal Board of Canvassers proclaimed Agaton N. Cosuco elected Municipal Mayor of Mamburao with 539 votes, Hospicio A. Pacal having obtained 524 votes.

On November 24, 1947, Pacal filed with the Court of First Instance of Mindoro an election protest on the grounds that the protestee Cosuco was not eligible for the office of Municipal Mayor of Mamburao because he is not a Filipino citizen being the son of Juan Cosuco, who is a Chinese citizen; he has not filed the certificate of candidacy within the time prescribed by the Election Code; and he spent for his campaign more than the total amount of emoluments for one year attached to the office of municipal mayor of Mamburao. The protest also impugns the election of the protestee on the ground of errors, irregularities, illegalities and frauds committed in precincts 3, 4 and 5 of said municipality. Protestee was duly summoned and furnished with copy of the complaint on November 27, 1947, and on December 5, 1947, he filed his answer, wherein he alleges, among other things, that if errors, irregularities, illegalities and frauds were committed in the aforesaid precincts Nos. 3, 4 and 5, the same consist in the counting in favor of the protestant of more than 32 ballots wherein he does not appear to have been voted for the office of mayor and in the rejection of 36 ballots wherein protestee appears to have been voted clearly for municipal mayor.

On May 18, 1948, protestant filed a motion to dismiss or strike out protestee's answer on the ground that the same was filed beyond the five days time fixed by the Election Code, which motion was denied by the lower court.

In pursuance of the provisions of section 175 of the Revised Election Code and upon agreement of the parties, the trial court appointed three commissioners with authority to open the ballot boxes and examine and recount the ballots in precints 3, 4 and 5 of said municipality of Mamburao. The Commission submitted its reports, original and supplemental (Appendices A and A–1 to appellant's brief).

The court below, after passing upon the validity of the votes claimed by and objected to by the parties, found for the protestee-appellee, and declared him duly elected Municipal Mayor of Mamburao, Mindoro, having obtained 9 votes more than the protestant-appellant, with costs against the latter. Hence, this appeal.

The claim as to protestee and appellee's ineligibility was abandoned.

Under the first assignment of error it is claimed for the appellant that the trial court erred in denying protestant's

motion to dismiss or to strike out protestee's answer on the ground that this was filed beyond the five days period fixed by the Election Code (section 176-b). It is undisputed that said answer was filed eight days after the protestee was summoned and served with a copy of the election protest. Counsel argues that the provisions of the law fixing five days from the receipt of the summons and the motion of protest within which the protestee shall answer is as mandatory as the provision fixing the time for the filing of the motion of protest within two weeks following the proclamation of the candidate and that in the same manner that the court acquires no jurisdiction to pass upon and decide questions raised in a counter protest when the same is filed out of time, as held in Arrieta *vs.* Rodriguez, 57 Phil., 717, so the trial court has not acquired jurisdiction to pass and decide questions raised in protestee's answer which was filed unseasonably. Laboring under this theory, appellant claims that the trial court also committed the seventh error assigned in adjudicating to the protestee in precinct No. 5 two more votes than the number which appears in the certificate of canvass made by the Municipal Board of Canvassers.

We hold that the points raised under the first and seventh errors are untenable. The provision to the effect that the answer should be filed within five days from the receipt of the summons is neither mandatory nor jurisdictional. This can be clearly inferred from the very provisions of the Election Code, section 176, subsections (*b*), (*c*) and (*e*), under which a protestee shall answer: (1) within five days after being summoned of; (2) in case there has been no summons, from the date of his appearance; or (3) in all cases before the commencement of the hearing, and if no answer shall have been filed to the protest, a general denial shall be deemed to have been entered by the protestee. The procedure in election cases as formulated in the new Election Code as well as in the previous legal provisions on the same matter shows that election contests are not to be conducted upon "pleadings or by action" because the purpose of the law is to "free the courts as far as possible from the technicalities incident to ordinary proceedings and to enable justice to be administered speedily and without complications" (Lucero *vs.* De Guzman, 45 Phil., 852). In election cases the primary aim of the courts is to carry out the will of the electorate as expressed in the ballots (Cecilio *vs.* Tomacruz, 62 Phil., 689). "The institution of popular suffrage is one of public interest and not a private interest of candidates" (20 Corpus Juris, 227.)

The answer filed by the protestee in the case at bar is not a counter protest wherein the votes received by the protestant in other precincts are impugned. It merely

alleges that if irregularities, illegalities and frauds were committed in the very precincts specified in the protest, the same were committed in favor of the protestant and consisted in the rejection of valid votes cast in favor of the protestee and in the adjudication to the protestant of ballots wherein he did not appear clearly voted. Even if the answer of the protestee were a real counter protest, inasmuch as the irregularities therein alleged were committed in the very precincts involved in the protest, the trial court acquired jurisdiction to revise the contents of the ballot boxes in said precincts and to pass upon the validity of the votes cast therein. Whether the answer to the counter protest was filed out of the time or not is of no consequence. In the case of Dacuycuy *vs.* Enriquez, 40 Off. Gaz., No. 8 (Aug. 23, 1941), 4th Supp., p. 95, the Court of Appeals held:

"No tiene importancia el hecho de que se ha presentado tarde la contraprotesta en la que se alega la comisión de irregularidades en la apreciación de las balotas en los mismos precintos especificados en la protesta, porque, habiéndose alegado en la misma la comisión de irregularidades en el recuento de los votos en dichos precintos, el Juzgado adquirió jurisdicción para revisar las urnas de dichos precintos y adjudicar los votos en ellas encontrados a quienes correspondan."

Appellant contends that the protestee had no right to claim the two additional votes in precinct No. 5 over the 54 votes appearing in the certificate of canvass made by the Municipal Board of Canvassers on the ground that having filed his answer out of time he (protestee) was deemed to have filed no answer at all but only a general denial. There is nothing to this point. Once the ballot boxes were opened, it was the duty of the trial court to examine all their contents and to adjudicate the valid votes found therein to either one of the candidates. Considerations of public policy demand that the ballots should be accepted as the best proof once the truth concerning an election is made accessible thru the opening of the ballot boxes. Thus, the trial court is empowered to examine the ballots and to determine which are legal and which are illegal even when neither of the parties has raised any question as to their illegality.

The Commissioners appointed by the trial court after opening the ballot boxes and examining and recounting the ballots corresponding to precincts Nos. 3, 4 and 5 of the municipality of Mamburao submitted their reports wherein it appears that the ballots claimed by the protestant without objection were 25 in precinct No. 3, 83 in precinct No. 4 and 77 in precinct No. 5. In the decision appealed from, the trial court held that 23 ballots in precinct No. 3, 42 ballots in precinct No. 4 and 71 ballots in precinct No. 5 were claimed by the protestant without objection and were adjudicated to him. Inasmuch as the number of said

unobjected ballots does not tally with the number of the same appearing in the reports of the Commissioners, it is now claimed that the trial court committed errors 2, 3 and 4, which read as follows:

"2. The trial Court erred in holding that in precinct No. 3 there were 23 ballots claimed by the protestant without objection and in adjudicating to the protestant only 23 such ballots, when according to the Report of the Commissioners the ballots in Precinct No. 3 claimed by the protestant without objection are 25.

"3. The trial Court erred in holding that the admitted ballots of the protestant in precinct No. 4 are 82 and in adjudicating to the protestant only 82 such ballots, when according to the Supplemental Report of the Commisisoners the ballots in Precinct No. 4 claimed by the protestant without objection amount to 83.

"4. The trial Court erred in holding that there were only 71 ballots of the protestant in precinct No. 5 that were admitted without objection and in adjudicating to the protestant only 71 such ballots, when according to the Supplemental Report of the Commissioners the ballots claimed by the protestant without objection are 77 in number."

The record reveals that during the trial of the case, the protestee sorted 2 (Exhibits A and A–24) out of the 25 ballots in precinct No. 3; 1 (Exh. E–6) out of the 83 ballots in Precinct No. 4; and 6 (Exhibits F–30, F–39, F–43, F–48, F–75 and F–76) out of the 77 ballots in precinct No. 5 and objected to their admission in open court (pp. 50, 51–52, 76–77, 78, 85–86, 88, t. s. n.). The validity of said objected ballots was passed upon by the trial court in the decision appealed from. Hence the aforesaid three assignments of errors are without merit.

PRECINCT NO. 3

In this precinct, protestee admits as good and valid ballots of the protestant those marked as Exhibits A–1 to A–23, or a total of 23 votes. Protestant laid claim to Exhibits A, A–24, B, B–1, to B–7, C and C–1, but protestee objected to their admission on the ground that Exhibit A is a marked ballot because the names of Juan Mulingbayan and Estanislao Cosa were voted as members of the Provincial Board when they were candidates for municipal councilors; that Exhibit A–24 should not be admitted because the name appearing on the line for municipal mayor is "H. Raoul," which is very different from that of the protestant Pacal; that Exhibit B has been written by two persons; that in Exhibits B–1, B–2 to B–7, protestant's name does not appear to have been written clearly, that Exhibits C and C–1 were found in the envelope Exhibit C–2, marked with the words "Marked Ballots for Local Officers," duly sealed and signed by the chairman, poll clerk, inspector and substitue inspector. The trial court admitted Exhibit A holding that the voter simply made an innocent mistake in placing the names of Mulingbayan and Cesa in the spaces corresponding to the members of the Provincial Board. It

rejected Exhibit A–24 on the ground that it clearly appears that the candidate voted for mayor is "H. Raoul" and not H. Pacal under the authority of the cases of Cailles *vs.* Gomez and Barbaza, 42 Phil., 496; Lucero *vs.* De Guzman, 45 Phil., 852. It considered Exhibit B for the reason that although "A. Pacal" appears to have been written lightly the voter may have used another pencil in writing the names of the other candidates voted for in said ballot. It admitted Exhibits B–1 to B–7 because an examination of said exhibits shows that the voter's intention was to vote for the protestant and said votes fall under the rule of *idem sonans*. Concerning Exhibits C and C–1 which were found in the envelope Exhibit C–2, the rulling of the trial court was that said two ballots, being clearly votes for the protestant and there appearing no reason why the board of inspectors considered them as spoiled ballots and placed them in the white box for valid ballots, should be admitted as valid votes for the protestant (Cecilio *vs.* Tomacruz, 62 Phil., 689).

Protestant admits as good and valid ballots of the protestee Exhibits 1 to 45, but objected to the admission of Exhibits 46 to 90 as valid votes in favor of the protestee on the following grounds:

"He says that ballot Exhibit 46 is a marked ballot because it contains the word 'Necion'; that ballot Exhibit 47 is identified by the capital letter J on line 4 for councilors; that ballot Exhibit 48 contains the figure 77 on line 5 and is therefore, a marked ballot; that in ballot Exhibits 49, 50, 51, and 52 protestee was voted for member of the provincial board, adding that in ballots Exhibits 50 and 52 the word 'Lita' appears; that in ballot Exhibit 53 one Abestado is voted for as mayor and not the protestee; that in ballots Exhibits 54 and 55, the spaces for mayor are in blank; that in ballot Exhibit 56, S. Bautista is voted for mayor and A. Casuco for member of the provincial board; that in ballot Exhibit 57 the elector, after voting for provincial candidates, wrote at the bottom of his ballot his name 'Ramon'; that ballot Exhibit 58 is identified with the figure 5 on the first line for councilor; that Exhibit 59 should not be counted for protestee because on the line for governor contestee's name appeared to have been cancelled and C. Morente were written; that ballots Exhibits 60, 61, 62 and 63 have been written by the same hand; that ballot Exhibit 64 has been written by two persons and is a marked ballot because it contains the name A. Cortuna on one of the lines for councilor and who is not an official candidate for councilor; Exhibits 66 to 88 are also objected to for containing the initial and surname A. Cortuna, who, it is alleged, was not an official candidate for councilor; that Exhibits 89 and 90 also contain the initial and surname A. Cortuna, adding that Exhibit 89 contains the words 'Niloko lamang ng kaniang kausap' and Exhibit 90 the expressions 'Ang taghoy ng puso' and 'Sa dalampasigan."

The lower court rejected Exhibits 49, 50, 51, 52, 53, 54, 55 and 56, or a total of 8 votes, on the ground of misplacement of the name of the person intended to be voted for (Manalo *vs.* Sevilla, 24 Phil., 609 and Lucero *vs.* De Guzman, 45 Phil., 852). It also rejected Exhibits 89 and 90 as marked ballots.

On the other hand, it admitted Exhibit 46 because it was not proved that the word *Necion* is not a name of a person, aside from the fact that the voter does not appear to be a good writer. It also admitted Exhibits 47, 48, 57, 58, 59, 60, 61, 62, 63, 64, to 88 with the following ruling:

"The capital letter J in Exhibit 47 may stand for the initial of of a person whom the voter wanted to vote for councilor.

"The figure 77 on Exhibit 48 does not appear to have been intentionally placed for the purpose of marking the ballot. It might be that the voter intended it to be the initial of another candidate for councilor, or that he might have placed the figure inadvertently while he was deliberating on whom to vote (Valenzuela *vs.* Carlos and Lopez de Jesus, *supra*).

"Ballot Exhibit 57 should not be rejected because the word Ramon does not appear to be in the handwriting of the voter and it has not been proved that there was a voter whose name was Ramon. An elector must not be disenfranchised for acts done without his knowledge.

"The figure 5 in the ballot Exhibit 58 on the first line for councilors is not an identifying mark. The voter might have written the number for the purpose of referring to five candidates for councilors.

"In ballot Exhibit 59, on the line for governor, protestee's name appears not erased but cancelled, and then in lieu thereof C. Morente were written and protestee's name appears voted for mayor. The ballot should not be rejected.

"It is contended that ballots Exhibits 60, 61, 62 and 63 were written by the same hand. However, a close examination of the penmanship in the said exhibits do not sustain protestant's contention. The writer of ballot Exhibit 60 appears to have better penmanship than those who prepared ballots Exhibits 61, 62 and 63. Differences in the handwriting are discernible.

"As the ballot Exhibit 64, the Court cannot agree to the contention of protestant's counsel that it has been written by two hands. Ther is a marked similarity in the handwriting.

"With reference to the contention that Exhibit 64 to 90 contain the word Cortuna when Cortuna was not a candidate for municipal councilor; it was proved at that trial that a prominent citizen of Mamburao, whose name was Arsenio Cortuna was at first candidate for the municipal mayor and councilor but later desisted and did not present his certificate of candidacy. (Trans. p. 112.) The voters who vote for him might not have known that he did not proceed with his candidacy. The ballots, therefore, objected to on that ground as marked ballot cannot be sustained." (Ballots Exhibits 89 and 90 are excluded because they were rejected on other grounds.)

PRECINCT NO. 4

In this precinct protestant's votes appearing in Exhibits D, D–1 to D–5, D–7 to D–82, or a total of 82 ballots, are admitted by the protestee as valid. Protestant claims Exhibits D–6 and E, E–1 and E–2, but protestee objects to their admission on the ground that in Exhibit D–6 A. Pacal is voted for instead of protestant H. Pacal; that in Exhibit D no one has been voted for, protestee's name cannot be read in the space for mayor even with the aid of a magnifying glass; that Exhibit E–1 is a marked ballot with the word "Liberal"; and that in Exhibit E–2 "Serrano," is voted for as member of the provincial board as

an identifying mark because Mr. Serrano, who is now a Representative, is a prominent politician, and apparently the intention of the voter was to identify his ballot. The trial court declared Exhibit D–6 as valid under the Revised Election Code, 149 (6), and the ruling of *idem sonans*. It admitted Exhibits E–1 and E–2 as valid votes for the protestant and rejected Exhibit E on the ground that no one has been voted for mayor in said ballot.

Concerning protestee's ballots protestant admits as good and valid votes in favor of his adversary Exhibits 91 to 237, or a total of 147 votes. He, however, objects to the admission of Exhibits 238 to 247 on the following grounds:

"That in ballots Exhibits 238 and 239, only the initials A. C. of the protestee appear; that in ballot Exhibit 240, the person voted for mayor is illegible; that in ballot Exhibit 241 the protestee Cosuco appears voted for three different offices, to wit, for member of the provincial board, mayor and councilor; that in ballot Exhibit 242 on the last space for councilor the words 'Piedmont Panleng or Pasleng' appear; that ballot Exhibit 243 is a marked ballot; that in Exhibit 244, the protestee's surname does not appear to be clearly written and that the ballot has been prepared by two different persons; that Exhibit 245 is a marked ballot because in the last space for mayor capital 'S 110a' appear; that ballot Exhibit 246 appears to have been written by two hands; and that in ballot Exhibit 247 the protestee's name is illegible."

Passing upon the validity of said votes, the trial court made the following rulings:

"As there are no other candidates for municipal mayor with the initials A. C., the voters who prepared ballots Exhibits 238 and 239 must have intended to vote for the protestee Agaton Cosuco (Mandac *vs.* Samonte, 49 Phil., 284). These two ballots should, therefore, be counted in his favor.

"Ballot Exhibit 240 should be, as it is hereby rejected for protestee's name is illegible.

"Ballot Exhibit 241 in which the protestee appears to be voted for three different offices, should be counted in favor of the contestee under Section 149, No. 3, of the Revised Election Code.

"Ballot Exhibit 242 which contains the words 'Piedmont Panleng or Pasleng' may be considered as scattering vote (Namocatcat *vs.* Adag, 52 Phil., 789). Although the person voted for mayor is A. Cosuco, under the rule of *idem sonans*—it should be considered as a valid vote in favor of the protestee.

"Ballot Exhibit 243 appears with mud on the reverse side and if folded there appear to be marks which may have been caused by the melting of some kind of material with which the voter had nothing to do. It should be included as a valid vote for the protestee.

"In Exhibit 244, in the space for mayor, the word A. Cosuco can be read as well as the initial and surname C. Morente on the space for provincial governor. The ballot does not appear to have been written by two different hands. It should, therefore, be counted in favor of the protestee.

"Ballot Exhibit 245 is to be credited to the protestee. Apparently the voter who prepared it is not a good writer, but it is clear that his intention was to vote for the protestee, A. Cosuco, and for vice-mayor one whose initials were A. T. He seemed to have exerted effort in writing on the last space for councilor the name of candidate but could not go further than to write what appears to read SHOa.

"It is contended that ballot Exhibit 246 has been written by two hands. This contention is not tenable.

"In ballot Exhibit 247, the initial and surname E. Cosuco may be read. The vote should be counted in favor of the protestee."

PRECINCT NO. 5

Exhibits F, F–1 to F–29, F–31 to F–28, F–40 to F–42, F–44 to F–47, F–49 to F–74, or a total of 71 votes, in favor of the protestant were not objected by the protestee. Protestant claims Exhibits F–30, F–39, F–43, F–48, F–75, F–76, G, G–1 to G–5, or a total of 12 votes, which were objected to by the protestee on the ground that in Exhibit F–30 the contending candidates for governor appeared to have been voted for as an identifying mark; that Exhibit F–39 contains a distinguishing mark consisting of the letter J opposite the printed words "Members for the Provincial Board"; that in F–43 N. Pacal instead of H. Pacal is voted for the office of mayor that Exhibit F–48 appears to have been written by two persons; that Exhibits F–75 and F–76 were apparently prepared by one person; that Exhibit G appears marked with the world "Liberal" written in the space for provincial governor; that Exhibits G–1, G–4 and G–5 contain the initials "FE"; and that in Exhibits G–2 and G–3 protestant's name appears in the space for vice-mayor. The trial court rejected Exhibit F–30 as marked ballot and Exhibits G–2 and G–3 on the ground of misplacement of the names of persons intended to be voted for and admitted Exhibits F–30, F–43, F–48, F–75, F–76, G, G–1, G–4 and G–5 as not marked ballots.

On the other hand, protestant admits as good and valid votes in favor of his adversary Exhibits 248, 254, 256 to 297, or a total of 49 votes. Exhibits 255, 298, 299, 300, 301, 302, and 303 claimed by the protestee were objected to by the protestant on the ground that in Exhibit 255 C. Cosuco appears voted for mayor; that the initials "FE" appears in the space for provincial governor and "T." in the space for vice-mayor in Exhibit 298 as identifying marks; that Exhibit 299 is a marked ballot in that the voter voted for "A. Cosuco" and "G. Villarosa" for provincial governor and later on erased their names; that Exhibit 300 is identified by the word "Liberal" written on the line for provincial governor and is written by two hands; and that Exhibits 301 to 303 were written by one person. The trial court admitted all the ballots objected to by the protestant finding the objections thereto to be untenable.

After careful examination of the ballots involved in this contests we find that the lower court, for the reasons stated in its decision—which we hold are in accordance with law and warranted by the evidence of record—correctly admitted as valid for the corresponding candidate ballots Exhibits A, B, B–1 to B–7, C, C–1, 46, 47, 48, 57, 59, 60, 61, 62, 63, 64 to 88 in Precinct No. 3; Exhibits D–6, E–1, E–2, 238,

239, 241, 242, 243, 244, 245, 246 and 247 in Precinct No. 4; and Exhibits F–39, F–43, F–48, F–75, F–76, G, G–1, G–4, G–5, 244, 298, 299, 300, 301 to 303 in Precinct No. 5. It likewise correctly rejected ballots Exhibits 49, 50, 51, 52, 53, 54, 55, 56, 89, and 90 claimed by protestee in Precinct No. 3 ballot Exhibit E claimed by the protestant and ballot Exhibit 240 claimed by protestee in Precint No. 4; and ballots Exhibits F–30, G–2, and G–3 claimed by the protestant in Precinct No. 5.

However, we find that the trial court erred in rejecting ballot Exhibit A–24 in precinct No. 3 as not valid for the protestant. In this ballot it clearly appears that the one voted for mayor is "H. Pacal" and not "H. Raoul." The two letters preceding l are ca and not ou. The letter a preceding l is very similar to the letter a immediately suceeding capital P and to letters "a" in "Toralin" and in "Naligan." The terminal stroke in capital P was inadvetently made a little longer causing the letter to appear as R. Even if it were R instead of P, the vote should be credited in favor of the protestee under the rule of *idem sonans*.

We also find that His Honor committed error in crediting ballot Exhibit 58 in favor of the protestee. This ballot is evidently marked with the number 5. The reasoning of the trial court regarding this ballot is not correct because there are six places for municipal councilors in the ballot, six (and not five) being the number of councilors that should be elected in the municipality of Mamburao.

In view of the foregoing discussions, the fifth error in so far as Exhibits E, F–30, G–2 and G–3 are concerned, the sixth error with regard to all ballots mentioned except Exhibit 58, and the eighth error assigned by the appellant; and appellee's counter-assignment of errors Nos. 1 and 2, are hereby dismissed, and the results in the five precincts of the municipality of Mamburao are tabulated as follows:

Precinct No.	For protestant and appellant	For protestee and appellee
1	122 votes	137 votes
2	209 "	110 "
3	35 "	79 "
4	85 "	156 "
5	80 "	156 "
Total	531 votes	538 votes

It is our finding, therefore, that the protestee obtained seven votes more than the protestant for the office of Mayor of the municipality of Mamburao, Mindoro, in the elections herein involved.

Thus modified, the decision appealed from is hereby affirmed, with costs against the appellant.

Reyes and *Borromeo, JJ.*, concur.

Judgment modified.

[No. 1191-R. October 22, 1948]

ALVIN O. LASALA, plaintiff and appellee, *vs.* Dr. JACINTO VELEZ, defendant and appellant.[1]

TORTS AND DAMAGES; DAMAGES CAUSED IN THE EXERCISE OF A RIGHT; EFFECT; CASE AT BAR.—In order that an action for damages by acts or omission of a party may prosper, it is necessary to prove that the actor committed an illicit or unlawful act or omission (Decisions of the Supreme Court of Spain of October 30, 1909, May 10, 1910, May 8, and June 7, 1912, April 5, 1913, May 29, 1915, Jan. 19, 1916 and April 16, 1947) and when the damages complained of are caused in the course of an exercise of a right said damages are irreparable (12 Manresa pp. 548-549). In the case at bar, the plaintiff having used the well in question without first obtaining authority from its owner, the mother of the defendant, the latter was not guilty of tort in removing the flywheel of the water pump installed at the said well. Consequently, he is not liable for damages resulting therefrom.

APPEAL from a judgment of the Court of First Instance of Cebu. Martinez, J.

The facts are stated in the opinion of the court.

C. D. Johnston & A. P. Deen for appellant.
Pelaez, Pelaez & Pelaez for appellee.

DIZON, *J.:*

This is an appeal from the decision of the Court of First Instance of Cebu, the pertinent part of which is as follows:

"It has not been contradicted that Alvin O. Lasala for all the water he had secured he spent ₱6,106.40, from this amount must be deducted the amount which would have involved the operation of the machine for the filling of the tank from the well at the rate of ₱1.50 a day. Alvin O. Lasala said that normally it required an expenditure of ₱1 a day; the Court estimates at ₱1.50. No other damages can be adjudged.

"The counter-claim of the defendant is hereby denied for the reason stated in this decision.

"For all the foregoing consideration, Dr. Jacinto Velez is hereby required to pay the amount of ₱6,106.40 to Alvin O. Lasala by way of indemnity of the damages sustained by him, subject to deduction as stated above, with costs to the defendant."

The six assignments of error made in appellant's brief may really be reduced to one, namely: that the lower court erred in sentencing the appellant to pay damages to the appellee in the sum of ₱6,106.40, with the deduction provided in its decision, and in dismissing appellant's counterclaim. We shall accordingly discuss them in this light.

According to the evidence, Lourdes Velez owns an ice plant located on Fructuoso Ramos Street, Cebu City, the lot and building used being hers in common with her sister Constancia and her brother, the herein appellant.

[1] *See* Resolution SC—G. R. No. L-2653 dated January 25, 1949. Petition for certiorari is dismissed on the ground that the questions raised are factual.

When the Japanese forces occupied said city they took possession of the ice plant and operated it until they were driven away in the early months of 1945. Due to pressure exerted by them upon the appellant, the latter was forced to sell said property to the Nipon Yushi KK for the sum of ₱59,000, Japanese military currency, on the express condition that the vendee would remove the ice plant from the place where it was then located. After the liberation of the City of Cebu in April, 1945, the United States Army took over the aforesaid ice plant as enemy property and operated it until the month of December of the same year when it was leased by the assistant enemy property custodian to the appellee on a month to month basis (Exhibit A). The appellee being at that time an employee in the office of the assistant enemy property custodian, he continued operating the ice plant under the false pretense that the same was still being operated by the United States Army. In the month of January, 1946, however, the appellant discovered the truth, and while aside from claiming the return of the ice plant upon the ground that the sale made to the Nippon Yushi KK was forced upon him and was, therefore, void, the appellant did not seem to have objected at all to the ice plant being operated by the United States Army, he now took steps to protect the interests of his family against the appellee and his agent. For this purpose he prohibited their free entry into the parcels of land in which the ice plant was located and removed the flying wheel of the pump with the help of which water for the manufacture of ice was obtained from a well located at an adjoining lot belonging to his mother and which is more particularly indicated as point x on the plan Exhibit X. As a result of all this the appellee was forced to obtain water with which to run and operate the ice plant from other sources, and it was for the recovery of the expenses incurred by him in this connection that he brought this action for damages.

The matter of the injunction issued by the lower court upon appellee's petition on January 17, 1946 has become a moot question the contract of lease in favor of the appellee having been terminated on August of said year. The only questions remaining to be decided, therefore, are whether or not upon the facts of record the appellant is liable for damages claimed by the appellee and whether or not the appellee is likewise liable in damages upon appellant's counterclaim.

There seems to be no question that the ice plant in question is owned by Lourdes Velez and that the same is located on two parcels of land (lots 577–A and 577–C, Exhibit X) belonging jointly to her, her sister Constancia and her brother Jacinto. Neither is there any question that the well in question is located on lot No. 1 appearing on the plan Exhibit X belonging to their mother, Herme-

negilda Ch. Veloso. This well was the source of the water supply not only for the ice plant in question but also for the residence of the Velez family. In fact, according to the testimony of the appellant, the same was already in existence even before the construction and operation of the said ice plant.

The question of whether or not the well aforesaid is part and parcel or an integral part of the machinery or equipment of the ice plant must, in our opinion, be answered in the negative. In the first place, the appellee presented no evidence sufficient to overcome that of the appellant showing that the well in question belonged to his mother and that it was made principally to be the source of the water supply for the residence of the Velez family. That upon the construction of the ice plant mentioned heretofore the well was also made to supply the water required for its operation did not, in our opinion, make the well an integral part of its machineries or equipment. This conclusion finds strength and support firstly, in the fact that even when the appellant was forced to sell the ice plant to the Nippon Yushi KK, the aforesaid well was not included in the sale; to the contrary, it was stipulated, according to the uncontradicted testimony of the appellant, that the ice plant and all its machineries and equipment would have to be removed away from the parcels of land where they were and still are; secondly, in the fact that when the assistant enemy property custodian leased the ice plant to the herein appellee, no mention whatsoever was made in the contract of lease of the aforesaid well. As a matter of fact, the evidence shows that there was a time during the period when the ice plant was operated by the United States Army when the management attempted to deprive the Velez family of the right to use the well in question but the attempt was abandoned upon representations made by the appellant that the said well belonged exclusively to his mother and that it was not part of the equipment of the ice plant.

It is a fact that the ice plant obtained its supply of water from the well in question not only during the time the United States Army operated it but also during the period it was run by the Japanese, but it is none the less true that the use of the well made by the United States Army was with the tacit consent of the true owner thereof, while during the Japanese occupation the owner had no other alternative but to allow the Japanese to use the well.

It cannot be said, on the other hand, that the well in question was the only possible water supply for the ice plant, because after the appellant had removed the flying wheel of the pump and denied the use of the well to the appellee the latter was able to operate the ice plant just the same by securing water from other sources. It is to be conceded, of course, that the well offorded the most con-

venient, adequate and economic way of obtaining the water needed for the operation of the ice plant, but this, obviously enough, conferred upon the appellee, after the execution of the contract of lease in his favor, no right at all to make use of the well in question without the consent of its owner. In the first place, the well was not an integral part of the equipment of the ice plant. In the second place, the assistant enemy property custodian did not even attempt to authorize the appellee to use the well—a thing he had in law no right to do—as shown by the fact that the lease make no mention whatsoever of the well. Appellee's use thereof was, therefore, clearly unauthorized. There is, of course, no evidence in the record showing that appellant's mother had expressly ordered him or given him authority to remove the flying wheel of the pump in order to prevent the appellee from using the well, but in the circumstances of this case that authority may well be assumed considering the relationship existing between the appellant and the owner of the well.

Upon all the foregoing, our conclusions are as follows: that the well in question—a permanent improvement located on the property of the mother of the appellant—belongs to the former; that the contract of lease Exhibit A does not include the aforesaid well; that upon the execution of said contract, it was the duty of the appellee not only to "comply with all the municipal, provincial or insular ordinances, laws or regulations affecting the leased property," as expressly provided therein, but also to secure from the proper party the corresponding authority to use said well; that the appellee having used the same without first obtaining such authority, the appellant was not guilty of tort in removing the fly-wheel of water pump installed at the aforesaid well.

For the present action to prosper it is necessary to prove that the appellant committed an illicit or unlawful act or omission (Decisions of the Supreme Court of Spain of October 30, 1909, May 10, 1910, May 8, and June 7, 1912, April 5, 1913, May 29, 1915, January 19, 1916 and April 16, 1917). And according to Manresa:

"Por no reunir las condiciones de que se ha hecho mérito, no serán reparables los daños o perjuicios siguientes:

"* * * * * * *

"(c) Los causados ejercitando un derecho, pues el que usa de su derecho a nadie ofende. (Sentencias de 10 de Mayo de 1893, 28 de Abril de 1913 y 16 de Abril de 1917.)" (12 Manresa, págs. 548–549.)

We hold, therefore, that the appellant is not liable for the damages claimed by the appellee.

The dismissal of appellant's counterclaim must, however, be sustained. We can not agree with the appellant that the appellee is liable for the damages allegedly caused by his refusal to move out and vacate the land and building

where the ice plant was located. In the first place, that question can not be decided here with finality, appellant's co-owners not being parties to this action. In the second place, it must be borne in mind that the possession of the ice plant, including that of the lot and the building, was turned over by the enemy property custodian to, and accepted apparently in good faith by the appellee. The possession of the enemy property custodian had never been even challenged by the appellant and his co-owners. Appellee's possession, therefore, could well be taken as that of the enemy property custodian whom the appellant and his co-owners could not obviously hold liable in damages. Furthermore, considering that the lease in favor of the appellee was one on a month to month basis, it would have been highly unfair and unjust to require him to move out the whole ice plant facilities and install them somewhere else with the prospect that, at the end of the month, his lease thereon could be terminated.

Upon all the foregoing, judgment is hereby rendered reversing the appealed judgment insofar as it sentences the appellant to pay damages to the appellee in the sum of ₱6,106.40 subject to the deduction mentioned in the said judgment, and affirming it insofar as it discusses the counter-claim of the appellant. Costs against the appellee.

Concepción and *De Leon, JJ.*, concur.

Judgment modified.

[No. 1483–R. October 27, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* PABLO ROMEO, defendant and appellant

1. CRIMINAL LAW; ROBBERY WITH HOMICIDE; ACCESSORY AFTER THE FACT; CASE AT BAR.—Although the appellant took no part in the killing of the deceased, since he knew it was committed by his co-accused, and subsequently to the commission of the crime, helped in disposing of the booty, received and kept part of the proceeds, he is guilty as an *accessory after the fact* of the crime of robbery with homicide.
2. ID.; ID.; INDEMNITY.—The civil indemnity due from an accessory after the fact is limited to the value of the proceeds of the crime received by him.

APPEAL from a judgment of the Court of First Instance of Tarlac. Concepcion, J.

The facts are stated in the opinion of the court.

Tirso U. Aganon for appellant.

Assistant Solicitor-General Torres and *Solicitor Torres* for appellee.

REYES, J. B. L., *J:*

The appellant Pablo Romeo and one Juanito Mauricio were jointly charged in the Court of First Instance of

Tarlac with the crime of robbery with homicide for having killed Melecio Bravo and seized four chickens and six eggs carried by the latter. Juanito Mauricio pleaded guilty and was sentenced to *reclusión perpetua*, with the corresponding accessory penalties. Pablo Romeo, who denied guilt, was convicted after due trial as an accessory after the fact (*encubridor*) and sentenced to an indeterminate penalty of not less than 2 years of *prisión correccional* and not more than 8 years and 1 day of *prisión mayor*, to indemnify the heirs of the victim in the amount of ₱2,000, and to pay half of the costs. From that decision, he appealed to this Court.

It is admitted that while Juanito Mauricio and Pablo Romeo were walking together on the road to Camiling, Tarlac, on the morning of February 9, 1947, they saw a man ahead of them bearing some chickens. Mauricio started to walk faster to overtake the man and told his companion, appellant herein, to do likewise, but the latter stayed behind. Approaching the man, who turned out to be Melecio Bravo, Juanito Mauricio fired at and seriously wounded him with one shot from a .45 caliber pistol, stolen from the San Miguel Military Police. Mauricio and the appellant then searched the pockets of the fallen man and finding nothing of value, bore away the six eggs and four chickens that the victim carried. The goods were sold in Camiling for ₱5. The killer gave Romeo ₱2.50, with which appellant paid their bus fare and purchased two packages of Piedmont cigarettes, one of which he gave to Mauricio and the other he threw away after parting with his companion. The balance of ₱1.50 was kept by appellant until he reached Bayambang, Pangasinan, his home town.

Melecio Bravo, mortally wounded, was left on the roadside, and was found there by the Camiling police. He was able to issue a dying declaration to the effect that he had been assaulted by an unknown person, dressed in *maong*, who in company of another dressed in khaki, seized his chickens and eggs. At four o'clock in the afternoon of the same day, February 9, Melecio Bravo died as a result of a wound caused by a bullet that entered his back, pierced the stomach and came out of the opposit side. By the description and thorough inquiries from poultry merchants, the police traced and arrested Mauricio and Romeo.

The defense is to the effect that appellant was intimidated into helping Juanito Mauricio seize and sell the stolen goods; and that appellant did not profit from the proceeds of the crime, because after paying for the autobus fare of both and the two packages of cigarettes, the appellant threw away the cigarettes given him on his way home and delivered the balance of ₱1.50 to his father, for the purpose of surrendering the same to the authorities;

that when he was arrested by the police he offered the money first to the officers and later to the justice of the peace, but both refused the tender and told him to keep it for the time being.

We are of the opinion that the trial court correctly refused to give credence to this defense. No threat was made by Mauricio to appellant. Nor was it likely that Mauricio would subject appellant to violence in the Camiling Market place with people about and in broad daylight. If appellant had been acting solely under the influence of fear and intimidation, there is no reason why the ₱1.50 given to him should not have been turned over to the police upon reaching his home. According to his own testimony, the appellant and the killer parted at Camiling, the latter going back to his station at San Miguel, Tarlac, while Romeo proceeded to Bayambang, Pangasinan, where he lived. This being the case, the appellant certainly ran no risk from Juanito Mauricio after getting home; while he must have realized at least that he was in danger of being involved in a serious offense. Yet he kept silent about the murder. His fear of Mauricio certainly falls short of that uncontrollable panic that the law demands in order that an accused be exempt from responsibility.

Romeo's credibility is further reduced by his fantastic story that both the police and the justice of the peace refused to accept the tender of the balance of the proceeds of the crime when the same constituted direct evidence in connection therewith.

That appellant threw away his package of cigarettes is no proof that he revolted at profiting from the crime, for he retained the money. The cigarettes were of no use to him as he did not smoke; but the money he could use, and his silence indicates his desire to retain the same for his own benefit. At any rate, he helped in disposing of the stolen goods.

It is also to be noted that on the witness stand Mauricio admitted he and appellant divided voluntarily the price of the loot between them (t. s. n., p. 10). We can not deny him credence in this particular, for he undoubtedly tried his best to minimize the appellant's responsibility by asserting that the latter had no participation in the actual killing, when in fact, his original confession pointed to the appellant as a co-conspirator in the foul deed.

Therefore, no error was incurred in convicting the appellant as an accessory after the fact. While he took no part in the killing, he know it was done, and subsequently to the commission of the crime, helped in disposing of the booty, received and kept part of the proceeds. However, the lower court erred in sentencing appellant to pay an

indemnity of ₱2,000 for the death of Melecio Bravo. As pointed out by the Solicitor General, the indemnity by appellant should be limited to the amount of ₱2.50, which he received from the proceeds of the sale of Melecio Bravo's eggs and chickens.

With this sole modification, the judgment appealed from is affirmed with costs against appellant.

Gutierrez David and *Borromeo, JJ.*, concur.

Judgment modified.

[No. 1573–R. October 28, 1948]

REYNALDO DIRAIN et al., plaintiffs and appellants, *vs.* ANASTACIO DINGLAS et al., defendants and appellants

1. EVIDENCE; INJUNCTION; DISMISSAL OF ACTION FOR INJUNCTION ITS EFFECT UPON RIGHT TO OR POSSESSION OF LAND; CASE AT BAR.—The dismissal of the action for injunction by the court *a quo* in the instant case can not be interpreted as proof of lack of right on plaintiff's part or of the absence of actual physical possession by them of the land subject of the action. An action for injunction necessarily involves the question of ownership, and unlike forcible entry, it is not as expeditious as the parties would have wanted the remedy to be. When the defendatns in said action merely threatened to enter the property by force, the action was proper and adequate. But when subsequently they dispossessed plaintiffs by force, it ceased to be of use. The more speedy remedy open to the plaintiffs, then, was the action of forcible entry, as the strength of their right lay in their actual and physical possession and enjoyment. Therefore, their voluntary dismissal of the action for injunction, after the filing of the case for forcible entry, was not evidence that they were not and have not been in actual physical possession of the property.
2. FORCIBLE ENTRY AND DETAINER; PHILOSOPHY UNDERLYING THE REMEDY.—The instant case presents a typical case of an attemp by public officials to use their power to dispossess peaceful possessors of lands for the purpose of favoring friends. This, precisely, is what the summary action of forcible entry purports to remedy. (For philosophy underlying the remedy, see 11 R. C. L., 1137, 1138, cited in Supia and Batioco *vs.* Quintero and and Ayala, 59 Phil., 313).
3. DAMAGES; JUDICIAL NOTICE: AS TO EFFECT OF WEATHER ON YIELD OF FISHPONDS; AS TO PRICES OF FOODSTUFFS IN 1946.—The court takes judicial notice of the fact that during the typhoon period and during the rainy season, the yield of fishponds necessarily ceases or decreases because of the high waters and flooded rivers and the inclement weather. The court also takes judicial notice of the fact that, the prices of foodstuffs in 1946 were then still sky-high.

APPEAL from a judgment of the Court of First Instance of Cavite. Alfonso, J.

The facts are stated in the opinion of the court.

E. A. Beltran for appellants.
Lucio S. Miranda for appellees.

LABRADOR, *J.:*

This is an appeal from a judgment of the Court of First Instance of Cavite dismissing a complaint for forcible entry and absolving the defendants from the action, which was originally instituted in the justice of the peace court of Ternate, Cavite.

The subject of the action is designated as lot No. 607 of the Ternate cadastre, and is described in plaintiffs' complaint. There is evidence to the effect that the lot used to be the bed of a creek, appropriate for conversion into a fishpond. When the cadastral survey was made before 1930, the lot was claimed by Raymundo del Rosario, Tomas Nigos, and the municipal government of Ternate (*See* Exhibits N, S, and 6). In the year 1921 this lot was declared for taxation purposes in the name of Tomas Nigos under tax declaration No. 2613 (Exhibit 5), but this tax declaration was cancelled by tax declaration No. 3840, which is dated May 31, 1932 (Exhibit N). Tomas Nigos appears to have been paying the land tax on this cadastral lot during the years 1918 to 1929 (Exhibits 4, 4–A, 4–B, 4–C, 4–D, 4–E, and 4–F), but beginning the year 1935 it was Raymundo del Rosario who had been paying the taxes thereon (Exhibits C, F, Q, R, and U).

The plaintiffs allege that on or before October 10, 1945, and for many years prior thereto, they had been in continuous occupation and enjoyment of said land, but that defendants on the above-mentioned date secured the forcible ejectment of the plaintiffs therefrom by some members of the military police, who connived and confederated with each other to effect plaintiff's dispossession. The defendants, in their answer, allege that the land in question was converted into a fishpond only in the year 1939, when defendant Cresenciano Nigos occupied it and completed the construction of the fishpond thereon; that during the Japanese occupation the defendants were in continuous and adverse occupation of the land; that in the month of August, 1945, the municipality of Ternate leased the property to Cresenciano Nigos, and from that time on the latter had been in actual and physical possession thereof. It is further alleged in defendant's answer that another action for the same cause had been filed in the Court of First Instance of Cavite, and that the said action is still pending before the said court without any decision having been rendered thereon, and further that the land in question is also pending trial in the cadastral court in cadastral case No. 1331 of the Province of Cavite.

The justice of the peace court in which the action was originally filed dismissed the action, and when the case was appealed to the Court of First Instance of Cavite, the latter also dismissed the action and absolved the defendants. The Court of First Instance found that before October 10, 1945, the defendant Cresenciano Nigos was in actual phys-

ical possession of the land by virtue of a contract of lease executed in his favor by the municipality of Ternate. This finding of the trial court is based mainly on the fact that before August 29, 1945, plaintiffs had presented a civil action in the Court of First Instance (civil case No. 4090), and that since the plaintiffs in this case did not succeed in obtaining a writ of preliminary injunction against the defendants, the defendants must have continued in possession of the land, such that the municipality of Ternate leased it to defendant Cresenciano Nigos on August 22, 1945. This appeal is directed principally against the findings of fact of the court *a quo*.

The trial court places much importance on the presentation of civil case No. 4090, the action for injunction, and on the fact that no preliminary injunction was issued thereon, in order to arrive at its conclusion that the plaintiffs were not in possession of the land in question prior to their dispossession. But a mere perusal of the record of said case should have led the trial court to conclude otherwise. The complaint alleges that plaintiffs had been in actual and physical possession of the land for not less than sixty years, and that for the last six years said land was in the physical possession of Frisco Bagtas as leasee. It also alleges that the defendants, the municipality and mayor of Ternate, are trying to lease the property to other persons and are about to enter the fishpond with threats of force and intimidation upon the plaintiffs and their representatives. The record shows that the Court of First Instance issued the corresponding order for the writ of preliminary injunction and bond therefor was presented. However, it does not appear that the bond was finally approved. The plaintiffs subsequently prayed for the dismissal of the action. This dismissal can not be interpreted as proof of lack of right on plaintiffs' part or of the absence of actual physical possession by them of the land subject of the action. An action for injunction necessarily involves the question of ownership, and unlike forcible entry, it is not as expeditious as the parties would have wanted the remedy to be. When the defendants in said action merely threatened to enter the property by force, the action was proper and adequate. But when subsequently they dispossessed plaintiffs by force, it ceased to be of use. The more speedy remedy open to the plaintiffs, then, was the action of forcible entry, as the strength of their right lay in their actual and physical possession and enjoyment. Therefore, their voluntary dismissal of the action for injunction, after the filing of the case for forcible entry, was not evidence that they were not and have not been in actual physical possession of the property.

The clear preponderance of the evidence submitted by both parties is that on October 9, 1945, while plaintiff

Francisco del Rosario was in possession of the land, the municipal mayor of Ternate, Anastacio Dinglas, accompanied by the chief of police and some members of the military police, entered upon the land and demanded that the plaintiff Francisco del Rosario and his tenant Blas Dirain leave and vacate it. The municipal mayor showed Del Rosario a letter of the provincial fiscal, which was presented in the trial as Exhibit 2, in which the fiscal advised the said mayor that the Court of First Instance had not yet acted on the bond of Del Rosario for the issuance of the writ of preliminary injunction and neither had it issued the writ, and that inasmuch as Cresenciano Nigos is actually in possession of the premises in question, nobody can rightfully interfere with said possession. Del Rosario refused to abandon the fishpond, stating that he would do so only if ordered by a sheriff. As Del Rosario refused to leave, in spite of demands and threats made by the mayor and the chief of police, the mayor returned the following day, October 10, 1945, accompanied by defendant Cresenciano Nigos and members of the military police. A military police sergeant by the name of Mauro Z. Ambrosio was then on the land, and on seeing the letter of the fiscal, advised Del Rosario to leave the land. Francisco del Rosario refused to do so, unless the said sergeant execute a writing to the effect that he had been asked to move out of the fishpond. Accordingly, Sergeant Ambrosio executed a certificate, which reads as follows:

"10 October 1945

"TO WHOM IT MAY CONCERN:

This is to certify that Francisco del Rosario was asked to move out of the fishpond which is under court injunction because it has been the order in a letter by the provincial fiscal of Cavite to the mayor of Ternate that the said Francisco del Rosario has no lawful right to the said fishpond.

"(Sgd.) MAURO Z. AMBROSIO
"7th M. P. Co., Naic Detachment"

[20c Doc. stamp. affixed.]

This written statement was given to Francisco del Rosario, who thereupon left the fishpond with his tenant Blas Dirain.

In view of the fact that, as above set forth, Francisco del Rosario and his tenant Blas Dirain were driven away from the fishpond on October 10, 1945, the only question at issue is whether before said dispossession it was Francisco del Rosario who was in actual physical possession of the disputed fishpond, or the defendant Cresenciano Nigos. The plaintiffs showed that the fishpond was leased by Del Rosario to one Frisco Bagtas on May 31, 1940 (Exhibit X); that Bagtas was in occupation thereof from that time up to July, 1945, when he gave up the lease, although he did not execute any document for the return of the lot until August 24, 1945 (Exhibit B). In the month of April, 1945,

Frisco Bagtas employed Blas Dirain to fix the fishpond on the condition that he would share in the produce of the fishpond. In the month of May, 1945, Francisco del Rosario employed laborers to fix the fishpond, and the laborers continued working thereon up to September 24, 1945 (Exhibits E, F, G, H, I, J, K, and L). Francisco del Rosario testified, in addition, that in the month of August, 1945, the mayor of Ternate approached him and asked him if he had any document to the fishpond, and that if he could not produce such document, he would give the fishpond under lease to Cresenciano Nigos, or that Del Rosario and Nigos divide it by halves; that Del Rosario then answered that he had a document; that two weeks afterwards, the same mayor again called on him, demanding that he share the fishpond with Cresenciano Nigos, but that Del Rosario refused; that after this last demand of the mayor, Del Rosario consulted his attorney, and on August 27, 1945, a complaint for injunction was filed in the Court of First Instance of Cavite against the municipal mayor of Ternate and the municipal treasurer. This is civil case No. 4090 already referred to above. At the same time, his attorney wrote a letter to the mayor, stating that he had the papers of lot No. 607 in the name of Del Rosario, and that the municipality of Ternate did not have the right to enter into said lot, because it was the property of said Del Rosario, who had constructed a fishpond thereon, spending ₱4,000. In that letter the attorney for Del Rosario also stated that if the municipality of Ternate had any claim to the land, the same should be presented before the court, and that said municipality should respect the law (Exhibit A).

The defendants testified that the land in question was originally owned and possessed by Tomas Nigos, father of defendant Cresenciano Nigos; that Cresenciano Nigos and his father and their grandparents had been in occupation of this lot for not less than sixty years, and that it was the latter who had converted the creek into a fishpond in the year 1939. Tomas Nigos, father of Cresenciano Nigos, also testified that he and his son were the ones in possession before October 10, 1945, such possession dating as far back as the Spanish regime; that they have paid taxes thereon since 1922 and the cadastral fees for the land; and that they had been paying taxes up to 1939, when the land was rented by them from the municipality.

A cursory study of the documents presented by the defendants themselves belie their testimony that Tomas Nigos and Cresenciano Nigos had been paying the taxes on the land from 1922 up to 1939, and that from the latter date they had been in possession as lessees. As already stated, the tax declaration over the property in the name of Tomas Nigos tax declaration No. 2613, is dated April

30, 1921 (Exhibit 5), but it appears to have been cancelled by tax declaration No. 3840. Tax Declaration No. 3840, which is Exhibit N of the plaintiffs, shows that the land is contested by Tomas Nigos, Raymundo del Rosario, and the municipality of Terntae, not land belonging to Tomas Nigos exclusively. The receipts for taxes presented by Tomas Nigos are not for the year 1922 and thereafter, but up to the year 1922 (See Exhibits 4, 4–A to 4–F). The defendants could not present any evidence of the supposed lease contract by the municipality for the year 1939 in favor of the Nigoses, father and son. On the contrary, Exhibit 1–A, presented by the defendants, which is an application for lease signed by Cresenciano Nigos, expressly states *that lot No. 607 is vacant.* If Cresenciano Nigos and his father had been in possession of the lot since the Spnaish regime, or prior to August 7, 1945, the date of the application for lease, Cresenciano Nigos would not have stated in his application *that the land is vacant.* The lease contract signed by the municipality, Exhibit 1, is dated August 22, 1945. As to the alleged disappearance of the prior lease of 1939, it is strange that the Nigoses should have retained such receipts as Exhibits 4, 4–A to 4–F, and such unimportant documents as notices, Exhibits 6, 7, and 8, but have not been able to conserve any of the supposed contracts of lease executed in their favor from 1939 to 1945.

But as against the assertions of the defendants of their alleged possession of the lot from the Spanish regime up to the year 1945, plaintiffs introduced as a witness on rebuttal Artemio Abaya, chairman of the committee created under Administrative Order No. 128 for the purpose of investigating the complaint of Francisco del Rosario against the municipality of Ternate, Cavite (Exhibits Y, Y–1, Y–2, and Y–3). Abaya declared that when the said committee inspected the land in the year 1940, the person whom he found on Lot No. 607 is no other than plaintiff Francisco del Rosario. Of equally significant import is the testimony before said committee of Tomas Nigos, Exhibit Z, which the trial court erroneously refused to admit in evidence as impertinent, but which is competent as evidence not only to impeach the credibility of Tomas Nigos, but also as an admission against pecuniary interest. The following portions from the said testimony are enough to belie all the protestations of possession and occupation made by the defendants:

"Q. And is this area which you call Navotas River and below the boundary monument between Ternate and Naic the portion converted into a fishpond by Francisco del Rosario?—A. Yes, sir. (Roll of Exhibits for plaintiffs, p. 30.)

"Q. Is the fishpond you constructed still in existence?—A. Yes, sir.

"In whose possession is it; is it in the possession of another people?—A. It is in the possession of Francisco del Rosario.

"Q. During the time this fishpond was in your possession, was the public free to enter in there?—A. Yes, sir.

"Q. And is this fishpond which you constructed the same fishpond that is in question now; portion of the Navotas River claim by Francisco del Rosario?—A. The fishpond which I constructed had been made a part of the fishpond built by Francisco del Rosario which is three times bigger than the fishpond I built. Not only the fishpond I built he converted but also he took part of the Navotas River three times more. (Roll of Exhibits for plaintiffs, pp. 34-35).

"Q. If you took pity in the people of barrio San Juan and others, why did you then give the fishpond to Francisco del Rosario instead of delivering it to the municipal government?—A. No, sir, I did not give him the fishpond.

"Q. Now, what happened?—A. I abandoned it because I knew that the people of the barrio are claiming that as their fishing ground." (Roll of Exhibits for plaintiffs, pp. 35-36).

The above admissions conclusively prove that while Tomas Nigos may have originally possessed the lot now in question, he later abandoned it, and upon its abandonment plaintiff Francisco del Rosario occupied it and included it in his own fishpond. The abandonment must have taken place after the year 1922, when Tomas Nigos stopped paying the taxes, and when Francisco del Rosario started the occupation of the lot.

The above evidence, aside from belying defendants' alleged possession, fully corroborates the testimonies of Francisco del Rosario, Frisco Bagtas, and Blas Dirain regarding the occupation of the land by Francisco del Rosario, its conversion and improvement into a fishpond by him, and its actual and physical possession, use, and enjoyment by Francisco del Rosario and his tenants and co-plaintiffs immediately prior to October 9 or 10, 1945, the date of the forcible ouoster.

We note that this case presents a typical case of an attempt by public officials to use their power to dispossess peaceful possessors of lands for the purpose of favoring friends. This, precisely, is what the summary action of forcible entry purports to remedy. The philosophy underlying the remedy has been aptly expressed thus:

"* * * the general purpose of the statutes creating the action is 'that, regardless of the actual condition of the title to the property, the party in peaceable and quiet possession shall not be turned out by strong hand, violence or terror. * * *. In affording this remedy of restitution the object of the statutes is to prevent breaches of the peace and criminal disorder which would ensue from the withdrawal of the remedy, and the reasonable hope such withdrawal would create that some advantage must accrue to those persons who, believing themselves entitled to the possession of property, resort to force to gain possession rather than to some appropriate action in the courts to assert their claims. This is the philosophy at the foundation of all these actions of forcible entry and detainer which are designed to compel the party out of possession to respect and resort to the law alone to obtain what he claims is his'." (11 R. C. L., 1137, 1138, cited in Supia and Batioco *vs.* Quintero and Ayala, 59 Phil., 313).

The only other issue to decide is the question of damages. Plaintiffs' witness, Blas Dirain, testified that the plaintiffs and he used to gather around ₱100 worth of fish every week, of which one-half should belong to the tenant and the other half to the owner of the fishpond. Del Rosario declared that the produce was double said amount. While the defendants have not introduced any evidence to contradict this assertion, it has not been shown during what months of the year such harvest of fish could be made from the fishpond in question. The court takes judicial notice of the fact that during the typhoon period and during the rainy season, the yield of fishponds necessarily ceases or decreases because of the high waters and flooded rivers and the inclement weather. The court also takes judicial notice of the fact that, as the trial took place in 1946, the prices of foodstuffs then were still sky-high. Taking into consideration that the plaintiffs claim that they had spent ₱4,000 in the construction of the fishpond, we believe that ₱500 annually is the reasonable value for the use and occupation of the fishpond by the defendants.

For all foregoing considerations, the judgment appealed from should be, as it hereby is, reversed, and the defendant and appellee, Cresenciano Nigos, ordered to vacate and return the possession of the fishpond in question to the plaintiffs, and to pay the plaintiffs-appellants the sum of ₱500 yearly from the time he occupied the land in October, 1945, until said return. Costs of both instances shall be against the appellees.

So ordered.

Reyes and *Paredes, JJ.*, concur.

Judgment reversed.

RESOLUTION

December 15, 1948

LABRADOR, *J.:*

In a motion for reconsideration, defendants and appellees claim that they were in actual possession of the property before plaintiff and appellant Francisco del Rosario and immediately before the filing of the present action. The statements upon which the claim is based are sufficiently overcome by the testimonies of almost all of the witnesses for the plaintiffs, whom we have found to be more credible. Thus, the testimony of the municipal treasurer, who based his assertion that Del Rosario was not in possession merely because be refused to pay his taxes, is a mere conclusion of the said treasurer, which is not based on actual knowledge, and is certainly unavailing against the positive testimonies of the tenant and workers who had been all the time on the land in question. With respect to the allegation that the members of the military police could not have

disturbed the actual possessor, we state that they must have respected the opinion of the provincial fiscal, a public official, and pursuant to his demands given possession to the defendant.

But even admitting that in the course of the struggle for the possession of the property in question, the defendants may have at some time been in actual possession, although thereafter ousted by the plaintiffs and their agents, such actual and physical possession is not the possession which the law seeks to protect, because it was the possession of a trespasser. There is no doubt that the plaintiffs were in peaceful possession of the land before the controversy arose in the attempt of the defendant mayor to get the property from them. If by force or trick the defendants succeeded for some time to set foot on the land against plaintiffs, the latter are not considered thereby as having lost their possession, and their right of possession is not supposed to have been destroyed by the trespass. They had a priority of peaceful possession, and this priority of peaceful possession is the one that the law seeks to protect and enforce, not that of the trespasser.

The motion for reconsideration is hereby denied. So ordered.

Reyes and *Paredes, JJ.*, concur.

Motion denied.

[No. 1757-R. October 28, 1948]

PEDRO M. TELMO, plaintiff and appellant, *vs.* SERAFIN FABIE (now FRANCISCO FABIE, Administrator of the Estate of the deceased SERAFIN FABIE) and PEDRO S. MESCALLADO, defendants; SERAFIN FABLE etc., defendant and appellee.

1. LEASE; PROVISION IN LEASE CONTRACT THAT EITHER PARTY MAY CANCEL LEASE UPON 30 DAYS' NOTICE; ITS EFFECT WHEN LESSEE IS IN ARREARS IN PAYMENT OF RENTALS AND HAS ABANDONED PREMISES; CASE AT BAR.—The 30 days' notice agreed by the lessor and lessee in the case at bar is unnecessary, not only because the lessee was already in arrears in the payment of rentals, but also because he had abandoned the premises in question. It is an undisputed fact that the plaintiff had already lost possession of the premises; otherwise. he would not have filed this suit to recover it. The lease contract which continued, after the first year, on a month to month basis, terminated at the end of each unpaid month. Under these circumstances, the thirty days' notice would be a superflous requirement; this proviso may only be invoked while the parties were complying with the terms and conditions thereof, but not otherwise.

2. ID.; "DEBT MORATORIUM"; EFFECT UPON ENFORCEMENT OF RIGHTS AND OBLIGATIONS OF LESSOR AND LESSEE.—The "debt moratorium" only provided for the temporary suspension, pending action by the Government, of the enforcement of payment of

certain debts, but it did not leave without force and effect the provisions of the Civil Code concerning the rights and obligations of lessor and lessee. (Borromeo et als., *vs.* Ybañez et al., CA–G. R. No. 40–R (L–242); Palacios *vs.* Daza, Off. Gaz., No. 1, January, 1946.)

APPEAL from a judgment of the Court of First Instance of Manila. Sanchez, J.

The facts are stated in the opinion of the court.

Menandro Quiogue for appellant.
Ramirez & Ortigas for appellee.

PAREDES, *J.:*

This is a suit for forcible entry originally instituted in the Municipal Court of Manila. The complaint alleges that in July, 1946, plaintiff was forcibly ejected by defendants from a piece of land, on which two houses belonging to the plaintiff had been erected. The defendants alleged in their answer that there existed a lease contract in which plaintiff was lessee of defendant Serafin Fabie (now deceased, having died on November 29, 1946), on the land in question; that plaintiff failed to pay the rentals from August 1, 1942 to February, 1945; that the municipal court had no jurisdiction over the subject matter; that the plaintiff had violated the terms of the contract since August, 1942, for failure to pay the rentals due and that said contract had terminated in February, 1945 when plaintiff abandoned the premises and defendant Fabie took possession thereof. The Municipal Court ordered the plaintiff to deposit all the back rentals of the land from March 1, 1945 to October 31, 1946, at the rate of ₱28 a month; and ordered the defendant Fabie to restore to the plaintiff, as lessee, the possession of the aforesaid lot, and defendant Pedro S. Mescallado to vacate the lot he was then occupying, reserving to the plaintiff the right to file a suit for damages, the amount of which may be determined in a separate action. In an appeal taken by the defendants, the Court of First Instance of Manila reversed the decision of the municipal court and dismissed the complaint, with costs against the plaintiff who now interposes the present appeal. Counsel for appellant alleges that the lower court erred in having declared that the appellant abandoned the land on February 9, 1945; that Arturo Marciano was an intruder in the land, and not as a representative of the appellant in the possession thereof, that appellant had been negligent in the protection of his rights; that the defendants had the right to order the occupation by another, of the land in question; and that there was no necessity on the part of the defendants to notify the appellant in writing of the cancellation of the contract.

Pursuant to the contract of lease Exhibit E, dated December 13, 1938, plaintiff Pedro M. Telmo took possession

of the land in question, on January 1, 1939, as lessee of defendant Serafin Fabie. Paragraph 1 of the contract reads: "El plazo será de un año, a contar desde el 1.º de enero de 1939, para expirar, por consiguiente, el día 31 de diciembre de 1939, sin necesidad de requerimiento; pero después de esa fecha, este contrato continuará en vigor de mes a mes, pudiendo cancelar cualquiera de las partes, mediante aviso por escrito a la otra parte, con treinta días de anticipación." Plaintiff constructed two houses on the lot: a small one, bearing No. 2345, and a big one, bearing No. 2367 Herran Street, Paco, Manila. Plaintiff was in possession of said land up to February 9, 1945 when, during the battle for the liberation of Manila, the occupation Army destroyed the improvements thereon, so that house No. 2345 became a total loss, and all that remained of house No. 2367 were the walls of the ground floor and certain materials salvaged from the fire. Since that date, the plaintiff did not personally occupy the premises, as he and his family went to live elsewhere.

Plaintiff-appellant contends that after the destruction of the improvements on the land on February 9, 1945, he placed one Arturo Marciano to act as overseer of the ruined premises until July 4, 1946, when the latter was forcibly ejected therefrom by the defendant Mescallado who thereafter built a house on a portion of the land. This contention, however, can not stand an impartial scrutiny. Marciano stated that shortly after liberation, he entered into that portion of the land occupied by the remains of building No. 2367 and put up a store thereon, without the knowledge of the plaintiff, and that he was occupying that portion sometime in February or March, 1945, when plaintiff saw him there and asked him to take charge of whatever was left by the fire. It is thus seen that Marciano, upon entering the occupation of the premises, was merely a squatter who was later tolerated by the plaintiff to stay there, for the latter's own convenience. If Marciano were really plaintiff's overseer of the premises, he or the plaintiff would have notified Fabie at least of such arrangement. After liberation, plaintiff used to go to the land in question and saw portions thereof being occupied by Clemente Quiambao, one Maria, defendant Mescallado, and Rustico Elison, witness for plaintiff. Elison testified that these persons, including himself, occupied portions of the lot formerly held by plaintiff, and they were all tenants of defendants Fabie. And this must be true, because plaintiff did not even attempt to oust them from the premises or require them to pay him the rentals. Elison exhibited in court receipts, Exhibits 7 to 9 for the defendants, marked as Exhibits A, A–1 and A–2, for the plaintiff (withdrawn by the latter in the course of the trial), which constitute a strong proof that the deceased Fabie was the lessor of

the premises occupied by him. This, coupled with the fact that some of them did not notify plaintiff regarding their occupancy of the lot, shows that plaintiff was not at the time of the filing of the complaint, in possession thereof. The question, therefore, as to whether or not since February 9, 1945, plaintiff continued in possession of the premises in question, is answered in the negative.

Plaintiff claims that he had paid the monthly rentals of ₱28 from August, 1942, up to and including December, 1944, and that he tried to pay those in arrears in August, 1945, and in January, 1946, but in August, 1945, defendant Fabie was out, and in January, 1946, he refused to receive payment, complaining that the said plaintiff had refused to send him a ganta of rice during the occupation. It is quite true that plaintiff presented in evidence Exhibits B, B–1 and B–2, receipts for rentals paid, covering the months of May, June and July, 1942, but it is likewise true that receipts for rental payments from August, 1942 to December, 1944, were not produced, the plaintiff having alleged that the receipts corresponding thereto were burned with other personal belongings in his house on the night of February 9, 1945. We seriously doubt the payment of rentals corresponding to this period. The alleged loss or destruction of the receipts, in the face of the testimony of Francisco Fabie, son of defendant Fabie, who prepared receipts for rentals to the effect that the rentals from August, 1942 had not been paid, appears to be feigned. Francisco, the administrator of the Estate of the deceased Fabie, was the one in charge of the books of account of the deceased, and all payments made to his father, including rentals, were annotated by him in the said books of account. Francisco presented in court the original receipts of rentals for the months of August, September, October, November, and December, 1942, which were then prepared in advance, ready for delivery to plaintiff upon payment thereof, as had been his practice. He stated that as far as he is concerned, and judging from the books of account, rentals from August to December, 1942, had not been paid; and that was the reason he had in his possession the said original receipts. It was incumbent upon the plaintiff to show, by indubitable proofs, that he had discharged these obligations, for the simple reason that one who alleges that a certain obligation, the existence of which is admitted, has been extinguished, must prove such extinction. (Piñon *vs.* De Osorio, 30 Phil., 365; Hill *vs.* Veloso, 31 Phil., 160; article 1241, Civil Code). The account book of Fabie was also exhibited in the trial court, and examined by counsel for the plaintiff. It is strange to note that counsel did not present the book in evidence or, at least, put in the record, whatever data or information that would in any way disprove Francisco's testimony. The dates in rubber

stamps, on the right upper corner of Exhibits 2, 3, 4, 5, and 6 were, according to Francisco, the dates on which plaintiff had promised to pay the rentals at different times. From this, it may safely be concluded that as late as December 13, 1944, the rentals for the months of August to December, 1942, remained unpaid. With respect to the period from Januray, 1945 up to the filing of the complaint, the same thing may be said; in fact, plaintiff admitted he had not actually paid the corresponding rents. And considering the fact that the plaintiff had the aid of two lawyers, one of whom is plaintiff's wife, and if it is true that he held himself still the lessor of the premises, upon the refusal of Fabie to receive payments of rentals in January, 1946, he should have consigned such rentals, in the manner provided by law. The question, therefore, whether payments had been made by the plaintiff of the monthly rentals of ₱28 from August, 1942 to December, 1944, should be, as it is, answered again in the negative.

The plaintiff was not vigilant enough. It has been held that "unreasonable delay in the enforcement of a claim is strongly persuasive of a lack of merit, since it is human nature to assert a right most strongly when first invaded * * *. Stale claims are, therefore, not favored by the courts." (Buenaventura *vs.* David, 37 Phil., 436.) In the light of this precept, and considering the fact that the said plaintiff left the premises on February 9, 1945 and had made no efforts whatsoever to protect his rights until the filing of the complaint on February 13, 1946 in the municipal court, the conclusion is that the plaintiff was guilty of laches.

It is finally claimed by the plaintiff and appellant that in view of the provisions of section 1 of the contract, notice of cancellation thereof should have been given to him at least thirty days before the cancellation. We are of the belief, however, that such notice is unnecessary in this particular case, not only because the plaintiff was already in arrears in the payment of rentals, but also because he had abandoned the premises in question. It is an undisputed fact that the plaintiff had already lost possession of the premises; otherwise, he would not have filed this suit to recover it. The lease contract which continued, after the first year, on a month to month basis, terminated at the end of each unpaid month. Under these circumstances, the thirty days' notice would be a superflous requirement; this proviso may only be invoked while the parties were complying with the terms and conditions thereof, but not otherwise. The provisions of section 2, Rule 72, cited by counsel for the appellant, providing that the landlord or his legal prepresentative or assign, before bringing an action against a tenant for failure to pay rents due or to comply with the conditions of his lease,

should first make a demand, is not applicable in this case, because the landlord, the defendant herein, was not the one who filed the complaint for ejectment. It would be absurd to require the defendant to demand payment of back rentals when, according to plaintiff himself, he had been making offers to pay them as late as January, 1946, but was refused acceptance thereof. The attitude of the defendant, in this case, was a notice to the plaintiff that he considered the lease contract terminated, by expiration of the period, as it was, in fact, automatically terminated at the end of each unpaid month. (Crisologo *vs.* Castañeda, CA–G. R. No. 39; Tiamco *vs.* Boom Sim, CA–G. R. No. 247; Co Tia *vs.* Muñoz, CA–G. R. No. 110; Sugar Estates Dev. Co. *vs.* Philippine Printing Co., CA–G. R. No. 329.)

Discussing his last assignment of error, appellant alleges: "En cuanto a alquileres hasta Feb. de 1945, la orden Ejecutiva que declara en moratorium el pago de las obligaciones contraidas durante la ocupación japonesa pendiente de pagos, es aplicable." It appears, however, that the defendants are not so interested in the recovery of rentals in arrears. Moreover, we are of the belief that the "debt moratorium" only provided for the temporary suspension, pending action by the Government, of the enforcement of payment of certain debts, but it did not leave without force and effect the provisions of the Civil Code concerning the rights and obligations of lessor and lessee. (Borromeo et al. *vs.* Ybañez et al., CA–G. R. No. 40–R (L–242); Palacios *vs.* Daza, Off. Gaz., No. 1, January, 1946.)

The judgment appealed from is, therefore, affirmed, with costs against the appellant. So ordered.

Labrador and *Reyes, JJ.*, concur.

Judgment affirmed.

[No. 2587–R. October 28, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* JESUS DE LOS SANTOS, defendant and appellant

1. CRIMINAL LAW; QUALIFIED THEFT; EVIDENCE; CIRCUMSTANTIAL EVIDENCE; OPPORTUNITY TO DO ACT CHARGED MAY BE TAKEN AS CIRCUMSTANTIAL EVIDENCE AGAINST ACCUSED.—If the accused was the only one who had the opportunity to do the act charged, such circumstance may be taken against him. Exclusive opportunity, however, is not essential. It is enough that the person charged had an opportunity to do the act, if such circumstance, added to the chain of other circumstances, leads to the inference that he is really the author of such act. (Moran, The Law of Evidence, 491. See also U. S. *vs.* Aquino, 27 Phil., 462; U. S. *vs.* Feliciano, 36 Phil., 753.)
2. ID,; ID.; ID.; ID.; NO GENERAL RULE AS TO QUANTITY OF CIRCUMSTANTIAL EVIDENCE WHICH MAY BE SUFFICIENT IN A GIVEN

CASE.—No general rule can be laid down as to the quantity of circumstantial evidence which in any case will suffice. All the circumstances proved must be consistent with each other, consistent with the hypothesis that the accused is guilty and at the same time inconsistent that he is innocent, and with every other rational hypothesis except that of guilt. In the case at bar, there exists a moral certainty of the guilt of the accused, for the proofs on record preclude every reasonable hypothesis except that he was the author of the crime, and are sufficient to overcome the presumption of innocence.

APPEAL from a judgment of the Court of First Instance of Manila. Peña, J.

The facts are stated in the opinion of the court.

Matias E. Vergara and *Mariano Abaya* for appellant.

Assistant Solicitor General Torres and *Solicitor Abad Santos* for appellee.

BORROMEO, *J.:*

Convicted in the Manila Court of First Instance of the crime of qualified theft, and sentenced to serve from 4 years, 2 months and 1 day of *prisión correccional* to 7 years and 1 day of *prisión mayor,* to indemnify the offended party in the amount of ₱960, and to pay the costs, Jesus de los Santos pleads on appeal for the reversal of his sentence on the strength of his contention that the court *a quo* committed errors, (1) in giving credence to the witnesses, for the prosecution and not believing defendant's testimony, (2) in finding him guilty of the offense charged while his guilt was not proven beyond reasonable doubt, and (3) in not acquitting him consequently.

The facts of the case are stated in the decision of the court *a quo* as follows:

"From the evidence for the prosecution, it appears that, at the suggestion of the accused, the offended party, Bersabeth R. Guerrero, opened a photograph studio at 743 Legarda Street, Sampaloc, Manila (Exhibit A). For the purpose of the business, she acquired the necessary photograph equipments which she entrusted to the accused who lived in the same premises. In the morning of January 12, 1948, the offended party left her house. Upon returning at about 12:30 that same day, she found that the accused was not at the studio. In view thereof, she inquired for him from her son who informed her that at about ten o'clock that same morning, the accused left the house bringing a bundle along with him. Inasmuch as until late in the afternoon, the accused did not return, she suspected that something wrong had happened, so she peeped into the dark room where the photograph equipment was and noticed the disappearance of 6 bundles of enlarging papers valued at ₱240; 8 films 4" by 5" valued at ₱48; the lense of a camera valued at ₱620; and the arm of the speed graphic valued at ₱60. The offended party reported the matter to the Detective Bureau, MPD, which brought the case to the City Fiscal's office."

As an addendum to the above statement of facts, the evidence shows that sometime in September, 1947, defendant met the offended party, his townmate, in the refresh-

ment parlor run by the latter at Morayta street. There he proposed to her that they put up a photograph studio, and defendant convinced her that it was a better business than a refreshment parlor, and since he was an experienced photographer he could manage the studio if she would furnish the necessary equipment. Because of defendant's assurance and promise, Bersabeth sold her business and with the proceeds thereof, she bought the necessary equipments. Since then the defendant passed to live in Bersabeth's residence which was used as their photographic studio.

The defendant, on his part, testified, thus: That he gave up his work in Cavite to become an employee of the complainant, that after sometime, he asked the complainant permission to go back to his family; that complainant refused; that he pleaded again, but was refused, that on January 12, 1946, at ten o'clock in the morning, he left, in the presence of complainant's maid and son, telling the latter: "Inasmuch as your mother would not allow me to leave I decide to leave, so I am leaving"; that he took along with him a bundle of dirty clothes, which bundle passed before the eyes of the complainant's maid and son; that when he learned that he was wanted by the Police Department, he voluntarily presented himself for investigation on the morning of January 17, 1948; that Bersabeth was sent for but as she failed to appear that same morning, he was told to return in the afternoon at two o'clock; that at two o'clock that afternoon, he returned to the MPD, but Bersabeth arrived at about four o'clock; that at the investigation, it was made to appear that the complainant wanted him to return to work; that he was willing to go back if Bersabeth would give maintenance for his children, and provided he would be allowed to go home to see his family; that Bersabeth did not agree to the proposition; that they were told to return the following day when again he insisted on the support for his children, but complainant would not agree; and that with respect to the crime attributed to him, he flatly denied having carried anything belonging to the complainant.

The trial court then, analyzing the evidence, said:

"The only question to be determined in the instant case hinges in the credibility of witnesses, inasmuch as, on the one hand, those for the prosecution testified in a clear and convincing manner that the photograph equipments mentioned by them which were trusted to the accused, disappeared from the studio, attributing the said disappearance to the accused, while the latter, on the other hand, denied being the one who took such photograph equipments. In view of the circumstances under which the accused left said studio, that is, without the knowledge and consent, and during the absence, of the offended party, coupled with the fact that at the time he left he brought with him a bundle that he alleged to be his clothes which, according to him, were not brought by him to the house of his family but to a neighbor named Maria Torres residing at 744 Legarda, the Court can not see its way clear how it can entertain any doubt

as to the veracity of the testimony of the offended party corroborated by the witness Rosario de Jesus. The crime committed by the accused is one of qualified theft as held by the Tribunal Supremo of Spain in its decisions of March 26, 1881, and July 6, 1894 (Viada & Wilaseca, 5th ed., Vol. 6 pp. 309–310). There is no reason to suspect that the present accusation is motivated by an act of revenge on the part of the offended party, considering that the accused did not deny her testimony to the effect that on the day previous to January 12, 1948, she had contracted the services of another photographer in view of the inefficiency shown by the accused in his work. Neither can it be inferred as an scheme on her part to evade payment for the services rendered by the said accused, for the reason that it appears uncontradicted that he received the amount of ₱460 while he was in the employ of the offended party."

Counsel for the appellant contends that the record does not justify a conviction that the defendant is guilty of qualified theft, as the judgment was merely based on circumstantial evidence which cannot lead to a conclusion, beyond reasonable doubt, that the defendant was the author of the crime charged.

Under the general rules governing circumstantial evidence in criminal cases, three requisites are necessary in order that this kind of evidence may be sufficient for conviction: (*a*) there must be more than one circumstances; (*b*) the facts from which the inferences are derived must be proved; and (*c*) the combination of all the inferential facts must produce a conviction beyond reasonable doubt as to the guilt of the accused.

It is an undisputed and proven fact that the complainant lost her photograph equipments worth ₱968 which were kept in her photo studio at Legarda street, No. 748, Manila City. Now, applying the above cited rules to the case at bar, we find on the record these circumstantial facts:

1. Juan de los Santos left the studio in the morning of January 12, 1948, in the absence and without the knowledge of Bersabeth R. Guerrero, his employer. Defendant's explanation was disbelieved by the court *a quo*. The record shows, in effect, that such an explanation is unsatisfactory. There was no reason to leave for good the studio during Bersabeth's absence or without informing her of his intention to quit the employment. His explanation that he told Bersabeth's son and her maid that he had to leave because Bersabeth did not allow him to see his family, is flimsy, and besides, according to the offended party, she allowed him to stay with his family if that were his wish. Moreover, defendant admits that instead of proceeding direct to his family, he went to leave his bundle of clothes in the house of a neighbor named Maria Torres *alias* Aling Maria at 744 Legarda Street, and from there to Moriones this betraying his claim that his intention to abandon the studio was to live again with his family.

2. When defendant left the studio he took a bundle with him. We claimed that it contained his dirty clothes. Ap-

pellant's counsel argues that the only evidence on record is that De los Santos carried a bundle of his clothes when he left the studio, hence the absence of ground for a conclusion that he took away with him the photograph equipments. Bersabeth's son and her maid were in the house when the defendant left the premises, but the prosecution failed to present them as witnesses. This omission is a point in favor of the defendant—thus argues his counsel—for it is a rule that suppression of evidence raises a presumption that such evidence, if produced, would be unfavorable. However, the failure of Bersabeth's son and her maid to testify does not vitiate the credibility of the offended party. At any rate, had they been placed on the witness stand they could have not testified otherwise but that the accused left with a bundle of clothes, which is admitted by the defendant himself. The non presentation of these two, whose testimony would at most be corroborative, will not certainly give rise to an unfavorable presumption against the prosecution. (U. S. *vs.* Dinola, 37 Phil., 797.) As to whether inside the bundle there were the equipments missing, nobody knows better than the defendant himself, except that, taking all together the other circumstantial evidence, it is logical to conclude that said equipments were concealed in the bundle precisely to hide them from the sight of the person or persons who might have happened to see him in leaving the studio, unless the defendant had taken away the articles from the studio before he left for good the premises.

3. The dissappearance of the photographic equipments was noticed when Bersabeth at about noon that day, upon returning to the studio from the City Hall, found that the defendant had also disappeared. It is obvious that these materials were taken away from the studio on that very day and in the absence of its owner. It could not happen before, for the defendant, if he were not the author, should have reported the missing to Bersabeth as he was the only one responsible for its care.

4. The defendant was the only worker in the studio and the equipments were stored in the dark room and were under the care and custody of the photographer, the defendant himself, who was the only person who had access to the darkroom. If the accused was the only one who had the opportunity to do the act charged, such circumstance may be taken against him. Exclusive opportunity, however, is not essential. It is enough that the person charged had an opportunity to do the act, if such circumstance, added to the chain of others circumstances, leads to the inference that he is really the author of such act. (Moran, The Law of Evidence, 491. See also U. S. *vs.* Aquino, 27 Phil., 462; U. S. *vs.* Feliciano 36 Phil., 753.)

To conclude, we are of the opinion that the circumstantial evidence of the case, combined all together, shows beyond

reasonable doubt the guilt of the defendant-appellant. In U. S. *vs.* Levente, 18 Phil., 439–446, it was held that no general rule can be laid down as to the quantity of circumstantial evidence which in any case will suffice. All the circumstances proved must be consistent with each other, consistent with the hypothesis that the accused is guilty and at the same time inconsistent that he is innocent, and with every other rational hypothesis except that of guilt.

In the present case, defendant's flimsy explanation cannot upset the combination of inferential proven facts which, in our opinion, leads to a conclusion, beyond reasonable doubt, that the photographic equipments belonging to the offended party were stolen, and that the author of the theft could not be other than the herein defendant. They are not, indeed, more suspicious, probabilities, or suppositions as hinted by the learned counsel for the appellant. There exists a moral certainty of his guilt, for the proofs on record preclude every reasonable hypothesis except that he was the author of the crime, and are sufficient to overcome the presumption of innocence.

In the decision appealed from the defendant was found guilty of the theft of the photograph equipments which was qualified by the grave abuse of confidence concurring in the commission of the crime, with the extenuating circumstance of the voluntary presentation of the offender to the City police of Manila. The penalty imposed is in accordance with Article 309, paragraph 3 of the Revised Penal Code in connection with Article 310 thereof, as the latter article is amended by Republic Act No. 120.

The penalty fixed by our laws is, in our opinion, excessive if applied to the present cause, taking into consideration all the circumstances concurring in the offense. This case therefore, once the decision becomes final, shall be submitted to His Excellency, the President of the Philippines, thru the Department of Justice, with the recommendation of this court that the defendant, upon serving one year of his sentence, if he observes good behavior, be extended pardon.

Judgment affirmed, with costs to appellant.

Reyes and *Gutierrez David JJ.*, concur.

Judgment affirmed.

[No. 1297–R. October 29, 1948]

TEODORA GABUTIN DE LABRA, plaintiff and appellee, *vs.* GENARO MENDOZA, defendant and appellant

EVIDENCE; ATTORNEY-AT-LAW; RELATIVE WEIGHT OF TESTIMONY OF A LAWYER.—As between a party to a cause and a lawyer—a sworn officer of the court—whose sincerity and good faith were patent to the trial judge who had all the opportunity to observe his demeanor and conduct at the hearing, the latter should be accorded more credence, especially when it is not, as in this case, vitiated by any interest. The alleged contradictions com-

mitted by the witnesses for the plaintiff are not only explainable, but also refer to minor and unimportant details which do not at all obscure the outstanding fact proven at the trial to the effect that appellee's typewriter which was left in the possession of her witness C. G. was taken by defendant, who notwithstanding demand, refused to return the same to plaintiff, because he wanted to apply it in the payment of the rental of a lot belonging to him which said C. G. had occupied during the enemy occupation.

Appeal from a judgment of the Court of First Instance of Cebu. Macadaeg, J.

The facts are stated in the opinion of the court.

Echavez and *Estenso* for appellant.

Amado F. Gador for appellee.

DE LEON, *J.:*

This is an appeal from the decision of the Court of First Instance of Cebu, sentencing the defendant and appellant to return to the plaintiff and appellee the Underwood typewriter, subject matter of the action or to pay its value amounting to ₱275 and to pay the costs. The claim for damages against defendant and appellant was not sustained.

In this appeal, the only question involved is whether or not the defendant and appellant retained a typewriter belonging to the plaintiff and appellee. In the determination of this question, much depends upon the credibility of the witnesses and the trial judge, who was in a better position than we are to gauge their veracity, upheld the contention of the plaintiff and appellee and rejected that of the defendant and appellant, reasoning his finding, as follows:

"El abogado Gador, declarando en contraprueba dijo que en cierta ocasión y antes de presentar la demanda contra el demandado éste pasó por la casa de aquél los dos tuvieron ocasión de hablar sobre la maquinilla. El abogado Gador dijo que en contestación a las gestiones que hiciera él, el demandado le dijo que no hiciera caso del asunto por que el fin y al cabo, la maquinilla era vieja y inservible y que además estas mujeres, la demandante y su testigo Cecilia Gianzon, son esposas de espias Japones. Si es verdad como así lo cree el Juzgado que el demandado hizo al abogado Gador semejantes manifestaciones, cae por su base defensa al efecto de que nunca ha visto la maquinilla en cuestion. El Juzgado ha tenido oportunidad de observar la coducta del abogado Gador cuando hacia sus repreguntas al demandado. Dicho abogado hizo esfuerzos de arrancar del demandando la admisión de que éste le dijo que la maquinilla era vieja e inservible, pero dicho demandado negó rotundamente haber hecho semejante manifestación. El Juzgado ha notado la sinceridad con que el abogado Gador hacia sus repreguntas y comoquiera que sus esfuerzos eran fútiles, se vió obligado a tomar el sitio testifical para informar al Juzgado la conversación que tuvo con el demandado referente a la maquinilla en cuestión. El Juzgado está convencidisímo de que realmente hubo tal conversación entre ellos y que dicho demandado le dijo que la maquinilla era vieja o inservible."

Upon a review of the record, we do not find any justification for interfering with the foregoing findings of the court

below. As between a party to a cause and a lawyer—a sworn officer of the court—whose sincerity and good faith were patent to the trial judge who had all the opportunity to observe his demeanor and conduct at the hearing, we feel we should accord more credence to the testimony of the latter, especially when it is not, as in this case, vitiated by any interest. The alleged contradictions committed by the witnesses for the plaintiff are not only explainable, but also refer to minor and unimportant details which do not at all obscure the outstanding foot proven at the trial to the effect that appellee's typewriter which was left in the possession of her witness Cecilia Gianzon was taken by defendant and appellant, who notwithstanding demand, refused to return the same to appellee, because he wanted to apply it in the payment of the rental of a lot belonging to him which said Gianzon had occupied during the enemy occupation. In an attempt to impeach appellee and her said witness, appellant stressed the fact that appellee's husband was a Japanese undercover and so was the husband of Gianzon. Indeed, the fact that the husbands of plaintiff and her said witness had served as spies for the Japanese may be considered as a misfortune to said women, but certainly such circumstance alone should not be a sufficient ground for the courts of justice to lend deaf ears to their testimonies which are not vitiated at all in the manners provided by law. Defendant and appellant admits that he knows of no improper motive on the part of the plaintiff and appellee, because he and said party were never enemies. (Page 18, s. n.) According to his brief, he is a merchant and a landowner with a monthly income from rents in the sum of ₱575. On the other hand, we glean from the record that plaintiff and appellee and her witness belong to the lowly class of people and as a matter of fact plaintiff and appellee is litigating this case as a pauper. Knowing how expensive and disadvantageous it is to maintain a suit against a well-to-do adversary, and considering the small amount involved, we refuse to believe that plaintiff and her said witness Gianzon, simple people that they are, have been prompted by motive other than to tell the truth and seek redress in the courts. We note that their testimonies are straightforward while that of the appellant as may be seen on page eighteen of the transcript is apparently evasive. For all the foregoing, we are of the opinion that the lower court has rightly and properly evaluated the conflicting testimonies of the parties.

Wherefore, and finding the decision appealed from to be in accordance with the law and the evidence, the same is hereby affirmed in all its parts, with costs against the appellant.

Concepcion and *Dizon, JJ.*, concur.

Judgment affirmed.

[No. 2114–R. October 29, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* SESINANDO REYES, NEMESIO CARABLE, HERMENEGILDO CARABLE and JUAN DE VILLA, defendants; HERMENEGILDO CARABLE and JUAN DE VILLA, defendants and appellants.

CRIMINAL LAW; HOMICIDE; CONSPIRACY BY INFERENCE; EXTENT OF LIABILITY OF CONSPIRATORS.—It is now well settled in this jurisdiction that conspiracy need not be proved by direct evidence but may be inferred from facts and circumstances indicating community of purpose on the part of a group of assailants (People *vs.* Carbonell, 48 Phil., 868, 876). Conspiracy having been established in the instant case it is immaterial whether or not one of the coconspirators also struck the deceased on the head after the latter had been attacked by another coconspirator. All the conspirators are necessarily liable for the crime resulting from the unlawful act of one of them.

APPEAL from a judgment of the Court of First Instance of Batangas. Victoriano, J.

The facts are stated in the opinion of the court.

Miguel Tolentino and *Constantino P. Tadena* for appellants.

Assistant Solicitor General Torres and *Solicitor Lacson* for appellee.

DIZON, *J.:*

This is an appeal from the decision of the Court of First Instance of Batangas finding Hermenegildo Carable and Juan de Villa guilty of homicide and sentencing Carable to an indeterminate penalty of from six (6) years and one (1) day of *prisión mayor* to twelve (12) years and one (1) day of *reclusión temporal,* after considering in his favor the mitigating circumstance of voluntary surrender, and De Villa to an indeterminate penalty of from six (6) years and one (1) day of *prisión mayor* to fourteen (14) years, eight (8) months and one (1) day of *reclusión temporal.* Both were likewise sentenced to indemnify the heirs of the deceased Alfredo Macatangay in the sum of ₱1,500, without subsidiary imprisonment in case of insolvency, and to pay each ¼ of the costs.

Sesinando Reyes, Hermenegildo Carable, Nemesio Carable and Juan de Villa were charged with homicide in the court below under an information of the following tenor:

"El Fiscal Provincial que suscribe acusa a Sesinando Reyes, Hermenegildo Carable, Nemesio Carable y Juan de Villa del delito de homicidio, cometido como sigue:

'Que en o hacia el día 3 de mayo de 1947, en el barrio de Abiacao del municipio de San Luis, Provincia de Batangas, Filipinas y dentro de la jurisdicción de este Hon. Juzgado, el acusado Sesinando Reyes armado de un puñal y los otros tres armados de garrotes conspirando y confabulándose entre si, obrando juntos y confederados y ayudándose mutuamente, voluntaria,

ilegal y criminalmente y sin motivo justificado, acometieron, agredieron e hirieron con sus respectivos puñal y garrotes a Alfredo Macatangay, infiriéndole una herida en el cuello lado izquierdo y varias heridas contusas en la espalda y diferentes partes del cuerpo, las cuales determinaron la muerte del mencionado Alfredo Macatangay en el mismo acto.'

"Hecho cometido con infracción de la ley."

That Alfredo Macatangay was stabbed on the back part of the neck by Sesinando Reyes and died as a result thereof is not disputed. The main question now raised by both appellants refers to the sufficiency of the prosecution evidence to establish their guilty participation in the commission of the crime.

After a careful review of the evidence we find the following to have been established:

In the afternoon of May 3, 1947, while Alfredo Macatangay was going up a hill, on horseback, after having drawn water from the nearby Abiacao River located in barrio Abiacao, municipality of San Luis, Province of Batangas, followed by Porfirio Mendoza, also on horseback, at a distance of about 5 brazas, he was suddenly attacked and clubbed by Reyes and the Carables (Hermenegildo and Nemesio) while De Villa was holding the briddle of Mendoza's horse warning him not to move unless he wanted to die. Inasmuch as Macatangay fell from his horse as a result of the attack, he immediately drew out his hunting knife and began to defend himself with it thereby succeeding in stabbing one of his assailants. In the course of the fight, however, Reyes was able to stab Macatangay on the back part of his neck as a result of which the latter fell to the ground face upward, probably dying instantaneously. At that juncture De Villa released the briddle of Mendoza's horse and with a piece of guaba branch hit the fallen Macatangay on the head, after which they all left. Mendoza then approached Macatangay and found him dead. Sometime later Leoncio Marco arrived at the scene of the crime and Mendoza asked him to report the incident to the barrio lieutenant who, in effect, arrived shortly thereafter. Upon being questioned by the barrio lieutenant Mendoza readily informed him that Reyes, De Villa and the Carable brothers were the ones who had assaulted and killed Macatangay.

Carable claims that when he saw Macatangay and Reyes fighting near the Abiacao River on the afternoon in question he attempted to separate them "but while doing so he was stabbed by the deceased, Alfredo Macatangay," loosing his consciousness as a result, having regained it only in the provincial hospital of Batangas. On the other hand De Villa contends that although he was present in the vicinity of the scene of the fight he took no part in it.

There is sufficient evidence in the record showing not only that the appellants conspired with Reyes to attack

Macatangay but also regarding their direct and active participation in the commission of the crime.

In the first place, both admit their presence at the place where, and at the time when the crime was committed. In the second place, the evidence for the prosecution shows that before the assault upon the person of Macatangay, Rodolfo Bonsol had seen the appellants together with Sesinando Reyes and Nemesio Carable, at a distance of ten brazas from the place where the crime was committed "peeping towards the river" or "looking towards the river" where, according to the evidence, Macatangay was at the time filling his cans with water. In the third place, according to Porfirio Mendoza the Carables and Reyes assaulted Macatangay by hitting him with pieces of wood or branches of trees, while De Villa held the briddle of Mendoza's horse warning him not to move unless he wanted to die, presumably either to prevent him from helping Macatangay or from running to the barrio to ask for help.

The above facts indicate conspiracy to commit the crime They show that the appellants and Reyes cooperated with each other in accomplishing a common purpose. As the Supreme Court said: "This unity of purpose determines the aggressors' common responsibility for the consequences of the aggression" (U. S. *vs.* Tandoc, 40 Phil., 954, 957). It is now well settled in this jurisdiction, on the other hand, that conspiracy need not be proved by direct evidence but may be inferred from facts and circumstances indicating community of purpose on the part of a group of assaillants (People *vs.* Carbonell, 48 Phil., 868, 876). The evidence of record fully justifies such an inference.

Conspiracy having been established it is immaterial whether or not the appellant De Villa also struck Macatangay on the head after the latter had been stabbed by Reyes. All the conspirators are necessarily liable for the crime resulting from Reyes' unlawful act.

Hermeneglido Carable's claim that he was stabbed by Macatangay while attempting to stop the fight between the latter and Reyes can not be believed because Carable told policeman Andres Reyes, soon after the incident, that he had *quarrelled* with Macatangay (Exhibit E, p. 44 record; trans., pp. 46–47, Lunar).

The defense tries to discredit the testimony of Mendoza claiming that at the time he took the witness stand he was under prosecution for theft and that, as a matter of fact, he was later on killed by an American soldier while attempting to steal army goods in a United States Army Depot. This latter allegation is invoked in support of De Villa's motion for new trial filed in this Court on February 23, 1948.

As to the charge for theft it appears that the provincial fiscal of Batangas had already asked for the dismissal of

the case for lack of evidence when Mendoza took the witness stand. On the other hand, even granting that Mendoza was later on killed in the manner alleged, this fact detracts nothing from the merits of his testimony previously given nor is it a ground to grant the appellants herein a new trial.

It appearing clearly from the testimony of Mendoza that he was present at the scene of the crime and saw how Macatangay was assaulted by the appellants and Reyes; that immediately after the latter had killed Macatangay Mendoza sent Marco to inform the barrio lieutenant of the killing; that when the latter arrived Mendoza informed him immediately that the appellants herein, together with Nemesio Carable and Sesinando Reyes, were the authors of the crime, and there being nothing in the record that could in any way justify the conclusion or even the suspicion that Mendoza falsified the truth, we are constrained to hold that appellants' guilt has been sufficiently established.

On the other hand it would seem that the motive for the commission of the crime has also been proven. It could have been no other than the ill feeling that existed between Macatangay and Reyes and their respective groups since they met on the accasion of a serenade made by the Macatangay group at the house of Consuelo Masankay, a barriomate of Reyes and the appellants. On that occasion Reyes acted discourteously towards the other group by singing precisely at the same time when Macatangay was singing and repeating the same thing when Consuelo sang later. When Macatangay met Reyes and De Villa again a few days later he asked the former to explain his discourteous attitude and went to the extent of attempting to assault him. It was De Villa, however, who was actually slapped by Macatangay when he attempted to intervene.

Upon all the foregoing we are of the opinion, and so hold, that the guilt of the appellants Hermenegildo Carable and Juan de Villa has been established beyond reasonable doubt, the crime committed by them being that of homicide as defined in article 249 of the Revised Penal Code and penalized therein with *reclusión temporal.*

The indemnity which the appellants were sentenced to pay to the heirs of the deceased Macatangay, however, should be increased to ₱2,000 and they shall pay the same jointly and severally with Sesinando Reyes.

Finding the appealed judgment in accordance with law and the evidence in all other respects, the same is hereby affirmed, with costs. The motion for new trial filed by the appellant De Villa is, consequently, denied.

Concepcion and *De Leon, JJ.,* concur.

Judgment affirmed.

[No. 2227-R. October 29, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* SALVADOR QUIMPO *alias* BUDDY QUIMPO, defendant and appellant.

CRIMINAL LAW; INCITING TO SEDITION AND ILLEGAL POSSESSION OF FIREARMS OR HAND GRENADES; CASE AT BAR.—The accused, during the meeting of the members of the special police under him, informed said members of the alleged manhandling of some of them by the members of the police force of the City of Bacolod and proposed the throwing of hand grenades in certain places of the city where no harm could be done to any person, for the purpose of teaching the police force of the City of Bacolod a lesson, which was accomplished as planned. While the act was not intended to harm or injure members of the police force of the City of Bacolod, it certainly was intended to cause commotion and disturbance against the preservation of peace and order, and that it was committed as an act of hate and revenge against the said police force, for which the accused was held guilty of the crime of inciting to sedition and illegal possession of firearms and hand grenades.

APPEAL from a judgment of the Court of First Instance of Negros Occidental. Cordova, J.

The facts are stated in the opinion of the court.

Melanio O. Lalisan for appellant.

Solicitor-General Bautista Angelo and *Solicitor Makasiar* for appellee.

RODAS, *J.:*

Salvador Quimpo, *alias* Buddy, was an officer of the Second World War Veterans' Organization, prior to and during all the time herein below mentioned, which organization was divided into three groups, known as the Special Police, headed by the accused himself; the Secret Service, by Dominador Vergara, and the Hauler's Department, by Resurreccion Flores.

As chief of the special police charged with the duty of helping the police of the City of Bacolod in keeping peace and order, the accused called a meeting of the members thereof in the afternoon of April 27, 1947, at Calle Araneta, City of Bacolod, where the headquarters of said association was situated. In response to his call between twenty and thirty of the members attended the meeting presided over by him during which he informed those present of alleged ill-treatment and manhandling which some of them were receiving at the hands of the police force of Bacolod, and, offering a solution to the situation, the accused spoke thus: "Inasmuch as the police of the City of Bacolod are ignoring us, we will give them a lesson by throwing hand grenades in places where there are no people so that they will come to recognize us," and he in fact instructed some of them to go to his house early in the evening of said day, where

they could be given hand grenades for the purpose of carrying out the plan. Not all the members were agreeable and in fact, the president of the organization, Jose Nueva España, offered objection, but Salvador Quimpo could not be dissuaded from his purpose.

In obedience to the request of the accused, several members of the special police under his command went to his house at about 7 o'clock in the evening of that day, among whom were Sergeant Dominador Vergara and Melecio Delaguison, who were assigned by him to throw and explode hand grenade at the old Naric Building; Syrus Ingles and Diosdado Ilupitan, at the old Philippine National Bank Building and Private Vergara together with the accused himself, at the corner of Araneta and San Sebastian streets, all in the City of Bacolod. For this purpose the accused brought out a sack containing hand grenades and gave one to each of the three groups. At 9 o'clock or just after two hours, two explosions were heard, one after another, and at about 11, another one which caused disturbance and commotion in the whole city, and particularly at the places where the explosions took place. A Chinaman died that night, obviously as a result of the explosions, but the particular place where it happened has not been mentioned.

The police of the City of Bacolod, puzzled by the explosions above-mentioned, had been conducting investigations and among those questioned were Melecio Delaguison, Diosdado Ilupitan, Eugenio Aguas and Resurreccion Flores, who testified on the trial of this case for the prosecution to the facts hereinabove set forth. Upon the accused's return from Manila on May 19, 1947, members of the secret service took him to the City Hall where he was submitted to an investigation from late in the afternoon of said day up to about 11 o'clock when he was taken to the house of the then Assistant City Attorney, Mr. Hieroteo Villarosa before whom Exhibit A was subscribed and sworn to by said accused as the statement made by him during the investigation in which he admitted having performed and committed the acts above set forth.

The only evidence for the defense consists of the testimony of the accused himself denying having committed the seditious acts with which he stands charged.

In the first place, he testified that the affidavit, Exhibit A, does not contain his declaration, for although several questions were addressed to him by Detective Sumagaysay, he only answered some, but Sumagaysay fabricated said affidavit based on the statements of the other witnesses for the prosecution who were members of the special police under him, threatened and coaxed to testify against him in the manner stated in said statements, irrespective of the fact that the contents thereof are not true, and that if said

witnesses actually testified on the trial of the case against the accused, it was because they were made to choose by the police of Bacolod either to be prosecuted or become witnesses for the government in this case.

In giving the reasons why he has been prosecuted for inciting to sedition and for illegal possession of firearm or hand grenades, the accused stated that the police force of the City of Bacolod were jealous of the powers he was given by the the MPC to confiscate firearms of different kinds as well as hand grenades from persons possessing them unlawfully, for in fact he had confiscated many such firearms and hand grenades and delivered them to the proper authorities. The accused also asserted that he was on good terms with all the members of the police force except with one Rallos for having been allegedly reported by him to the Secretary of Justice in Malacañan, and the Chief of Police, who caused his arrest and prosecution for inciting to sedition, for his having confiscated some firearms belonging to his (chief of police) friends.

The truth, however, is that although the accused denied having made the statements contained in his affidavit, Exhibit A, he admitted at the trial that there had really been a meeting of the special police under him on April 27, 1947, during which he informed the members thereof of ill-treatments received by some of them at the hands of the members of the police force of the City of Bacolod on several occasions, mentioning particularly the manhandling of the members of the special police in barrio Granada, Bacolod, although he denied having made any proposal at said meeting to explode hand grenades for the purpose of teaching the police force of Bacolod a lesson. In fact he said he objected to such plan, but some of the members—without giving their names or identity—manifested their decision and determination to carry it out. This admission alone shows that he had something to do with the explosions of hand grenades that took place on the night of April 27 in several places of the City of Bacolod. As head of the organization known as special police, it was his duty to prevent with all the means in his power, and, if necessary, with the help of the Police Department of the city, the realization of said plan. The court, however, is inclined to believe and so holds that the accused actually told the members of the special police under him to perform the act for which he has been prosecuted and in fact distributed hand grenades among said members, as hereinabove stated and been proven by the testimony of the witnesses for the prosecution, many of whom were members of his own organization, as well as the testimony of Assistant City Fiscal Hieroteo Villarosa, whose veracity has not been challenged. To this should be added the note or memo which the accused wrote to one Syrus Ingles in

which he admitted having committed all the acts hereinabove described, although he has tried to explain his admission by stating that his purpose was to see to it that the addressee would turn over to him all his papers showing his authority to possess and confiscate firearms, as in fact Syrus Ingles delivered to him said papers. No evidence, however, was presented that such papers were ever presented in this case or in the other case for possession of hand grenades filed against said accused.

According to article 142, of the Revised Penal Code, the crime of inciting to sedition is committed:

"The penalty of *prisión correccional* in its maximum period and a fine not exceeding 2,000 pesos shall be imposed upon any person who, without taking any direct part in the crime of sedition, should incite others to the accomplishment of any of the acts which constitute sedition, by means of speeches, proclamations, writings, emblems, cartoons, banners, or other representations tending to the same end, or upon any person or persons who shall utter seditious words or speeches, write, publish, or circulate scurrilous libels against the Government of the United States or the Government of the Commonwealth of the Philippines, or any of the duly constituted authorities thereof, or which tend to disturb or obstruct any lawful officer in executing the functions of his office, or which tend to instigate others to rebel and meet together for unlawful purposes, or which suggest or incite rebellious conspiracies or riots, or which lead or tend to stir up the people against the lawful authorities or to disturb the peace of the community, the safety and order of the Government, or who shall knowingly conceal such evil practices. (As amended by Com. Act No. 202.)"

It was established beyond reasonable doubt that the accused, during the meeting of the members of the special police under him, informed said members of the alleged manhandling of some of them by the members of the police force of the City of Bacolod and proposed the throwing of hand grenades in certain places of the city where no harm could be done to any person, for the purpose of teaching the police force of the City of Bacolod a lesson. The act was not intended, of course, to harm or injure members of the police force of the City of Bacolod, but certainly it was intended to cause commotion and disturbance against the preservation of peace and order, and that it was committed as an act of hate and revenge against the said police force.

Therefore, this court finds the accused guilty of the crime charged in the information, and hereby sentence him to suffer a penalty of from two (2) years, four (4) months and one (1) day to four (4) years, nine (9) months and eleven (11) days of *prisión correccional,* to pay a fine of ₱500, with subsidiary imprisonment in case of insolvency, and to pay the costs.

Jugo and *De la Rosa, JJ.,* concur.

Judgment modified.

[No. 1321-R. October 30, 1948]

CONCEPCION P. CASTRO and ANDRES M. CASTRO, plaintiffs and appellants, *vs.* THE HON. VALERIANO E. FUGOSO ETC., ET AL., defendants and appellees.

MARKETS; MARKET CODE; CONFLICTS BETWEEN STALLHOLDERS; MAYOR'S DECISION ON CONFLICTS, FINALITY OF; REVIEW OF MAYOR'S DECISION; PHRASE "COMPETENT LEGAL AUTHORITY," IN SECTION 49 OF THE MARKET CODE, CONSTRUED.—The language used in section 49 of the Market Code to the effect that the "decision or action (of the Mayor) in the premises shall be *final except as may otherwise be decreed by competent legal authority*" signifies that power to reconsider and alter the Mayor's decision, once rendered, lies in "competent legal authority" other than the Mayor. Recourse to such authority would be unavailing if the Mayor were to retain the power to change his decision. In the absence of specific period fixed in the ordinance, reason dictates that steps to have the Mayor's decision reviewed must be initiated within a reasonable time from its rendition; but if such decision remained subject to alteration by the same authority or his successor, the period for securing review would become indefinite and unascertainable. The "final decision" under the ordinance would thus become an illusion. The remedy against errors in the Mayor's decision must perforce be sought not in his department, but in the reviewing authority—the Department Secretary or the Courts. Considering the absence of fraud on the part of the petitioner in the occupation of the market stalls in question, as well as the laches on the part of the respondent by her negligence in not obtaining a review of the former Mayor's ruling, through the Department Secretary or the Courts, the petitioner can not be deprived of her right of priority to the aforesaid stalls. (*See:* Johnson *vs.* Towsely, 13 Wall. (U. S.) 72-79; 20 Law, Ed. 485, 486; 21 L. R. A. [NS] 291 et seq.; State ex rel. Cummings *vs.* Kirby, 7 S. C., 563; United States *vs.* de la Maza Arredondo, 6 Pet. 691; 8 Law, Ed., 547, 561).

APPEAL from a judgment of the Court of First Instance of Manila. Peña, J.

The facts are stated in the opinion of the court.

Claro M. Recto for appellants.

City Fiscal Bengzon and *Assistant City Fiscal Nañawa* for appellee City Mayor.

REYES, J. B. L., *J.:*

The present appeal was lodged against a decision of the Court of First Instance of Manila, upholding an administrative decision of the then Mayor, Hon. Valeriano E. Fugoso, declaring respondent Emilia Matanguihan entitled to the occupancy of stalls Nos. 347 and 348 of the Divisoria Market, and ousting therefrom the petitioner appellant, Concepcion P. Castro.

The following facts are not in controversy:

(*a*) That Emilia Matanguihan became the regular lessee of the stalls in question in 1943, while Concepcion Castro was the allottee to stalls Nos. 183 and 184;

(*b*) That both evacuated their stalls towards December, 1944, due to the precarious conditions then prevailing;

(*c*) That Concepcion P. Castro returned to Manila on May 1, 1945, and found her former stalls occupied by another vendor, whereupon she occupied the stalls of respondent Matanguihan, Nos. 347 and 348, as said respondent was then away;

(*d*) That appellant's occupancy was authorized by the Emergency Control Administration (ECA) then in control of the markets;

(*e*) That both Castro and Matanguihan filed applications for the regular allotment of the stalls in dispute, Matanguihan having applied for her old site on September 24, 1945, and the other on September 26, 1945;

(*f*) That the conflicting applications were decided on May 8, 1946, by the then Mayor of Manila, Hon. Juan Nolasco, in favor of the appellant Castro;

(*g*) That two months later, when Mayor Nolasco had already been replaced by the respondent appellee, Hon. Valeriano E. Fugoso, a reinvestigation was held, and on October 14, 1946, the new Mayor reconsidered and reversed the decision of his predecessor, on the ground that appellant Castro obtained possession of the stalls in question through "misrepresentation and fraudulent statement of material facts."

In view of Mayor Fugoso's decision, the appellant resorted to the Court of First Instance of Manila, alleging abuse of discretion. Emilia Matanguihan was declared in default, but the City Fiscal, in representation of the Mayor, answered the complaint contending that appellant Castro had obtained material occupancy of the disputed stalls through fraud, and that Mayor Nolasco's decision in her favor was contrary to Resolution No. 50, series of 1945, of the Municipal Board of Manila. The lower court having sustained Mayor Fugoso's decision, as previously noted, the case was brought up on appeal.

The first point urged by appellant is that Mayor Fugoso had no power to review the decision of Mayor Nolasco, because the latter's ruling was final in character under section 49 of the Market Code (Ordinance No. 2698) of the City of Manila (40 Off. Gaz. [No. 10], p. 2038). The lower court rejected this contention saying that (Rec. on appeal, p. 14):

> "* * * inasmuch as there is nothing in the Market Code that prohibits the party affected by the decision to ask for its reconsideration, and, such being the case, it is quite obvious that the mayor is empowered to set aside or amend a former decision when, according to the reinvestigation, the facts so warrant."

The trial court seems to have overlooked section 49 of the Market Code to the effect that the "decision or action (of the Mayor) in the premises shall be final *except as may*

otherwise be decreed by competent legal authority"; and the language used signifies that power to reconsider and alter the Mayor's decision, once rendered, lies in "competent legal authority" other than the Mayor. Recourse to such authority would be unavailing if the Mayor were to retain the power to change his decisions. In the absence of specific period fixed in the ordinance, reason dictates that steps to have the Mayor's decision reviewed must be initiated within a reasonable time from its rendition; but if such decision remained subject to alteration, the period for securing review would become indefinite and unascertainable.

The finality of the Mayor's decision, prescribed by the ordinance, would dwindle to nothing if the City Executive were to be allowed the privilege to reconsider and reverse his verdicts; the parties would never be certain what decision to appeal from; and the law's intention to have conflicts speedily determined would be frustrated. If the Mayor could reconsider the main decision, could he not afterwards alter the reconsidered one and the one after that? The "final" decision under the ordinance would thus become an illusion. The conclusion is forced upon us that the remedy against errors in the Mayor's decision must be sought not in his department, but in the reviewing authority.

Our position is not without support from judicial precedent. Interpreting section 10 of the Act of June 12, 1858, to the effect that "appeals from the decision of the district officers * * * shall hereafter be decided by the Commissioner of the General Land Office, whose decision shall be final, unless appeal therefrom be taken to the Secretary of the Interior," the United States Supreme Court held:

> "In the use of the word "final" we think nothing more was intended than to say that, with the single exception of an appeal to his superior, the Secretary of the Interior, *his decision should exclude further inquiry in that department.*" (Johnson *vs.* Towsely, 13 well., [U. S.] 72–79; 20 Law. Ed., 485, 586.) (Italics Supplied.)

Finally, the reviewing authority could not be the succeeding Mayor, but the Department Secretary or the Courts. The authorities are almost unanimous in holding that subsequent boards have no right to reconsider the actions of former boards (21 L. R. A. [NS] 291 et seq.) and this rule is equally applicable to decisions of executive officers. The reason is given in State ex rel. Cummings *vs.* Kirby, 7 S. C., 563:

> "We are unable therefore to discover any warrant for the exercise of such a power. It would be in conflict with all the analogies of the law to hold that one could review and revise the action of its predecessor, and would lead to endless complication and confusion. If one board could review and revise the action of its predecessor,

there is no reason why its successor should not have the same power, and the result would be that there could be no such thing as a final determination."

Counsel for respondent appellee predicates the Mayor's authority to reconsider his decisions on section 25 of the Market Code:

"SEC. 25. *Duration of regular lease.*—The regular lease of market stalls shall be understood to be continuous, unless the City Mayor, for any reasonable or just cause, or for any violation of the provisions of this or any other ordinance, or any rules and regulations relating to the administration of the public markets, revoke the same: * * *"

This section uses the term "revocation" in the sense of termination or cancellation of the lease or license to sell, and not to a reexamination of the right to become the lessee; otherwise section 25 would conflict with section 49, and would be controlled by the latter as a more specific provision on the finality of the Mayor's decisions. Reason and public policy require that awards on conflicting applications be not subject to indefinite reconsideration and change, because otherwise no one could feel safe or secure under an award; the Mayor could hold the possibility of reconsideration as a sword over the heads of stallholders, and their rights would correspondingly suffer. The right to sell in the municipality markets is a valuable right entitled to protection and security against arbitrary action or abuse of authority.

In the leading case of United States *vs.* De la Maza Arredondo, 6 Pet., 691; 8 Law. Ed., 547, it was ruled:

"It is a universal principle that where power or jurisdiction is delegated to any public officer or tribunal over a subject matter and its exercise is confided to his or their discretion, the acts so done are binding as to the subject matter; and individual rights will not be disturbed collaterally for anything done, in the exercise of that discretion, within the authority and power conferred. The only question which can arise between an individual claiming a right under the acts done and the public or any person denying its validity, are power in the officer and fraud in the party.

"All other questions are settled by the decision made or the act done by the tribunal or officer; whether executive, legislative, judicial or special, unless an appeal is provided for, or other revision by some appellate or supervisory tribunal, is provided by law." (At p. 561.)

This leads us to examine the question of fraud alleged by respondents. Emilia Matanguihan claimed that upon her return to the City she was able to reoccupy her stalls from March 20 to May 7, 1945; that she abandoned the stalls temporarily on the latter date because her stock in trade was exhausted; that Castro had asked her for permission to place her goods in Matanguihan's stalls in the meanwhile, because Castro's former stalls were occupied by others; that Matanguihan assented to the request, but later when she returned to resume business Castro would

not vacate. No one was presented to support the claim of respondent Matanguihan (which appellant Castro denied) and the omission is significant, for in a crowded place like the Divisoria Market, there would be witnesses galore to establish the truth. The neighboring stallholders could certainly have been called. Considering the trite rule that fraud is never presumed but must be clearly established and proved, the absence of corroborative evidence must be interpreted adversely to respondent's contentions. The conclusion thus arrived at is supported by Matanguihan's own conduct. From May to September 20, 1945, she took no step whatever to obtain redress; and in her letter (Exhibits 2) of October 15, 1945, sent to the Mayor in support of her application for the lease of her old stalls (and which the trial court erroneously considered to be a petition for reconsideration of Mayor Nolasco's award in May of 1946), Matanguihan made no allegation of being a victim of fraud or deception. The deceit charged is plainly imaginary.

The allegation that Mayor Nolasco did not have before him the report of the market investigator is, in our opinion, much overrated. The value of this report can not be gleaned from the records, for the report is not in evidence due to reasons unknown. If it was to the effect, as hinted by inspector Arsenio Santos, that the stalls in question were assigned in May, 1945, to appellant Castro by a market collector who had no power to do so, its omission was of no significance, for any such irregularity was validated by the Emergency Control Administration's permit in her favor. Despite the allegations in Mayor's Fugoso's ruling, no evidence exists that the ECA permit was improperly obtained.

There is no overlooking the fact that the respondent Matanguihan was negligent in the protection of her rights, first in allowing five months to elapse (May to September, 1945) without making any attempt to vindicate or protect her alleged rights, and again, in permitting sixty days to pass by before taking any steps to obtain a review of Mayor Nolasco's ruling, through the Department Secretary or the Courts. Her laches is a bar to her claim to priority.

Appellant Castro further contends that being an actual occupant, she is entitled to preference in the occupancy of the stalls, under the terms of Resolution No. 50, series of 1945, of the Municipal Board of Manila. Said Resolution reads as follows:

"RESOLVED, that with a view to making a solution to these conflicts, the adjudication of stalls in the City Public Markets be given to actual occupants whose occupation was not obtained through fraud, force or misrepresentation and when applied for not later than October 31, 1945; PROVIDED, that when a stall is claimed by one who can satisfactorily prove that he or she was the adjudicated occupant of the said stall on December 8, 1941, had not abandoned it for

unjustifiable reasons after that date, and he or she has registered with the City Health Officer on or before October 19, 1945 a written claim or right, shall be preferred if satisfactory proof is presented that the abandonment was for really justifiable reason."

Neither appellant Castro nor respondent Matanguihan were regular lessees of stalls 347 and 348 at the outbreak of World War II in December, 1941; and both filed their applications before October 31, 1945. Consequently, Concepcion P. Castro, as the *octual occupant* of the stalls, was entitled to preference under the Resolution and Mayor Nolasco was correct in so deciding. Only if her occupation had been obtained by fraud could she be deprived of priority, but as we have seen, no such fraud or misrepresentation is chargeable to appellant. And the fact that Mayor Nolasco decided the cause without the report of the market investigator Santos, can hardly be regarded as a fraud perpetrated by the appellant.

The city fiscal contends that the words *"actual occupant"* in Resolution No. 50 should be construed to mean "actual *legitimate* (or lawful) occupant." The proposition is not acceptable, for if the actual occupant were a legitimate one there could be no possible controversy, since the right of the actual legitimate occupant would necessarily have extinguished all prior rights. Furthermore, the Resolution regards an actual occupant as legitimate and entitled to priority so long as he did not obtain occupation "through fraud, force or misrepresentation."

It is argued that Resolution No. 50 applies only to conflicts between adjudicated occupants on December 8, 1941, and lessees under the Japanese regime. No such distinction is made in the Resolution, which speaks of "conflicts in the occupation of stalls in the public markets" without distinction. And what is more, both Mayor Nolasco and Mayor Fugoso purported to decide the present controversy precisely under Resolution No. 50. If the fiscal's thesis were correct, neither decision of the City Executive would be justifiable, and yet the City Fiscal seeks to uphold the resolution of Mayor Fugoso as correct, and to impugn that of Mayor Nolasco, as erroneous, under this very Resolution No. 50. Theory and conduct of respondent's counsel are inconsistent, to say the least.

It appearing from the record that the appellant Concepcion P. Castro is the one entitled to priority in the lease of stalls Nos. 347 and 348 of the Divisoria Market, the decision appealed from is reversed and the respondents enjoined from enforcing the Mayor's decision of October 14, 1946, as prayed for in the complaint. With costs against respondents.

Gutierrez David and *Borromeo, JJ.*, concur.

Judgment reversed.

[No. 1701–R. Octubre 30, 1948]

EL PUEBLO DE FILIPINAS, querellante y apelado, *contra* BENITO CALVARIO, acusado y apelante

PROCEDIMIENTO CRIMINAL; MOCIÓN DE SOBRESEIMIENTO; EXCEPCIÓN CONTRA RESOLUCIÓN, ORDEN Y DECISIÓN DEL JUZGADO YA NO ES NECESARIA; REGLA 21, ARTÍCULO 1, REGLAS DE LOS TRIBUNALES.—Según las actuales reglas de los tribunales (Regla 21, art. 1), las excepciones contra las resoluciones, órdenes y decisiones del juzgado ya no son necesarias. Después de denegar una moción de sobreseimiento el juzgado puede considerar todas las pruebas articuladas ante el. El hecho de que el juzgado inferior se ha fundado en las pruebas de la defensa para hallar y declarar el móvil del crimen, carece de importancia toda vez que cuando se admite la occisión el móvil no es esencial. La doctrina sentada en el caso de Pueblo *contra* Balotan, 45 Jur. Fil., 601, ya no rige.

APELACIÓN contra una sentencia del Juzgado de Primera Instancia de Sorsogón. De Venecia, J.

Los hechos aparecen relacionados en la decisión del Tribunal.

Sres. Dealca & Gajo en representación del apelante.

El Primer Procurador-General Auxiliar Sr. Gianzon y *el Procurador Sr. De los Angeles* en representación del apelado.

GUTIERREZ DAVID, *M.:*

A eso de las 10 de la noche del 17 de agosto de 1946, Noli Labalan caminaba por un camino vecinal del municipio de Magallanes, Sorsogón, seguido de un compañero, Severino Orillo, que le venía en zaga por unos cuatro metros. Al llegar Noli frente a la casa de Benito Calvario, alguien le llamó en voz alta diciendo: "Noli"; y esta llamada fué seguida de dos tiros sucesivos que al parecer procedieron de la casa de Calvario. Noli fué blanco de los tiros; y de resultas de las heridas que recibiera murió casi instántaneamente. Al percatarse de que su compañero había sido tiroteado, Severino Orillo puso pies en polvorosa pasando cerca de la casa de Tina Judit. Estando detrás de dicha casa, vió a Pablo y Atilano Calvario, hijos de Benito, corriendo hacia la playa.

Por tales hechos, Benito Calvario y sus hijos, Pablo y Atilano, fueron encausados de asesinato en el Juzgado de Primera Instancia de Sorsogón. Después de la vista, el citado Juzgado absolvió a Pablo y Atilano, más halló al padre, Benito Calvario, culpable simplemente de homicidio condenándole a sufrir una pena indeterminada de 8 años y 1 día, de prisión mayor, a 14 años y 8 meses, de reclusión temporal, con las accessorias de la ley, a indemnizar a los herederos del occiso en la suma de ₱2,000, y a pagar las costas procesales. De tal decisión, Benito Calvario apeló.

Poco tiempo después de ocurrido el suceso de autos, Pablo y Atilano Calvario, fueron al edificio municipal de Magallanes, seguidos momentos después por su padre,

Benito Calvario, quien dió parte a las autoridades de que había dado de tiros y matado a Noli Labalan con una ametralladora "Thompson sub-machine gun," de calibre .45. Las autoridades policiacas inmediatamente tomaron cartas en el asunto. Fueron al teatro del crimen. Hallaron al occiso sin armas y tendido boca arriba a un metro de distancia de la puerta de la casa del apelante. En la casa de éste, encontraron dos cartuchos vacios de "Thompson sub-machine gun," de calibre .45, tirados al suelo.

Hecha la autopsia del cadaver del occiso, por el doctor provincial, Donato San Juan, se verificó que aquél murió a consecuencia de varias heridas producidas por balazos y que su muerte obedeció a una hemorragia interna. Averiguados los acusados más tarde, el apelante Benito Calvario admitió ante las autoridades que él fué quien había disparado contra Noli Labalan usando un "Thompson sub-machine gun," de calibre .45.

En esta instancia, el apelante alega ahora que el Juzgado sentenciador erró en haberle hallado culpable de homicidio y en no haber declarado que él mató al occiso en legítima defensa de sí mismo y de su familia.

Admitido como está que el apelante es el que causó la muerte violenta del occiso, la cuestión a resolver es la de cual debe prevalecer, la versión de los testigos de cargo o la versión de la defensa que tiende a establecer que el apelante ha obrado en defensa de su persona y de su familia. Tal versión de descargo es como sigue:

A eso de las 9 de la noche del día de autos, en tanto que el apelante y otros miembros de su familia estaban campantes en su casa, alguien dió golpes en la puerta, gritando al propio tiempo: "Atilano, Pablo, bajen ustedes aquí porque voy a probar a ustedes como soldados scouts." El tal intruso también profirió palabras insultantes. El apelante y los otros miembros de su familia pasaron por alto el reto de aquel intruso que resultó ser Noli Labalan. Algunos instantes después, Noli añadió en voz alta: "Atilano, Pablo, todos vosotros los Calvarios que bajen porque voy a aniquilar hasta sus almas. Si ustedes no van a bajar, voy a quemar la casa." Comoquiera que ninguno dentro de la casa contestara, Noli comenzó a forcear la puerta. Viendo que esta estaba por ceder, el apelante cogió su "Thompson sub-machine gun," fué a la ventana y disparó contra el occiso. Muerto éste, el apelante se dirigió al edificio municipal para rendirse a las autoridades. En su camino, pasó por la orilla de un río y tiró el arma homicida al río. Y así que hubo llegado a la casa municipal, relató a las autoridades policiacas todo lo que había acaecido entre él y el occiso.

El Juzgado inferior no dió crédito a la versión de la defensa. Le damos la razón. En efecto, hay en los autos datos y circunstancias que hacen increíble la versión de la

defensa. Al occiso no le animaba ningún deseo de venganza para asaltar la casa de los Calvario y para agredir a cualquiera de los hijos del apelante. Bien es verdad que hacia el 14 de julio de 1945 hubo un incidente entre él y Atilano Calvario, hijo del apelante, en el que el occiso persiguió a dicho Atilano disparándole dos tiros de pistola que no dieron al blanco y maltrató de obra al apelante, pegándole con el mango de un revolver en el brazo, a pesar de que éste le pedía perdón. Échase de ver que de tal incidente los que salieron mal parados eran el apelante y su hijo y no el occiso. Aquéllos y no este debieran de tener motivos de rencor y de venganza. En la noche de autos, el occiso no llevaba armas. Es increíble que, dada la obscuridad de la noche, el apelante le haya visto portando una pistola. La teoría de la defensa de que el occiso estuvo más de una hora frente a la casa de los Calvario, insultando a éstos y retándoles repetidamente a una riña, está desvirtuada por el mismo testigo de la defensa, Roger Arrogante, quien aseguró que él estaba con el occiso a eso de las 8:30 de la noche de autos y que cinco minutos después de que el occiso le hubo dejado, él ya oyó los disparos que mataron a éste, y tal testimonio cuaja muy bien con la versión del gobierno de que el occiso fué tiroteado de un modo inopinado mientras pasaba frente a la casa de los Calvario. De los autos resulta claramente que el arma usada por el acusado era la ametralladora con número de serie 77938 que pertenecía al policía Venancio Balalan, sobrino político de dicho apelante, y no otra que éste supuestamente había tirado al río. De esto se infiere que el apelante había pedido por prestado dicho arma precisamente con el objeto de usarlo contra el occiso. Al cometer la falsedad de que el usado no era la del citado policía, el apelante evidentemente ha querido evitar la inferencia lógica de que se acaba hacer mención. Si fuera cierto que el occiso trataba de forcear la puerta para entrar hubiera sido más natural y más seguro para el apelante el acribillar de balas la misma puerta y no subir al segundo piso de la casa y asomarse por la ventana para disparar contra el occiso, exponiéndose así a ser visto por éste, que llevaba un "light," y ser blanco de los tiros del invasor. De modo que los hechos en que se trata de basar la legítima defensa, sobre estar desmentidos por las pruebas de cargo, son tan inverosímiles e improbables por sus circunstancias que no deben merecer crédito y no puede apreciarse por ellos la pretendida defensa propia.

El apelante suscita la cuestión de si el juzgado sentenciador, al decidir este asunto, podía o no considerar las pruebas de la defensa no obstante haberse el apelante excepcionado de la orden de dicho juzgado denegando la moción de sobreseimiento formulada después de articuladas las pruebas de la acusación. En apoyo de su proposición ne-

gativa, cita el caso de Pueblo *contra* Balotan, 45 Phil., 573. No hallamos mérito en esta contención. Dicha doctrina ya no rige puesto que según las actuales reglas de los tribunales (Regla 21, art. 1), las excepciones contra las resoluciones, órdenes y decisiones del juzgado ya no son necesarias. Después de denegar una moción de sobreseimiento el juzgado puede considerar todas las pruebas articuladas ante él. El hecho de que el juzgado inferior se ha fundado en las pruebas de la defensa para hallar y declarar el móvil del crimen, carece de importancia toda vez que cuando se admite la occisión el móvil no es esencial.

Estamos conformes con el Fiscal General en que los hechos cometidos por el apelante integran el delito de asesinato por la concurrencia de la circumstancia cualificativa de alevosía. La pena imponible es la de reclusión temporal en su grado máximo a muerte, que en el presente caso, considerada la circunstancia atenuante de presentación voluntaria a las autoridades, debe imponerse en su período mínimo, o sea, de 17 años, 4 meses y 1 día a 20 años de reclusión temporal. El apelante queda, pues, condenado a sufrir la pena de no menor de 10 años y 1 día de prisión mayor ni más de 17 años, 4 meses y 1 día de reclusión temporal.

Así modificada en lo que respecta a la pena carcelaria, la decisión de que se apela queda, por la presente, confirmada, con las costas a cargo del apelante.

Reyes y *Borromeo, MM.*, están conformes.

Se modifica la sentencia.

[No. 2123–R. October 30, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* RAMON MAHILUM, defendant and appellant

EVIDENCE; APPRECIATION OF EVIDENCE BY TRIAL COURT; SETTLED RULE.—The judge who tried the case has vastly superior advantages for the ascertainment of truth and the detection of falsehood over the court sitting as a court of review. Hence the well-settled rule that the appreciation of evidence by the trial court should not be disturbed in the absence of any fact palpably misconstrued by him.

APPEAL from a judgment of the Court of First Instance of Samar. Fernandez, J.

The facts are stated in the opinion of the court.

Decoroso Rosales for appellant.

Assistant Solicitor-General Barcelona and *Solicitor Makasiar* for appellee.

BORROMEO, *J.:*

In San Antonio, a municipality of Samar, Philippines, on the 31st day of March, 1946, a fatal mishap took place

when an automatic pistol caliber .45 in the hands of Ramon Mahilum exploded, resulting in the instantaneous death of Constancio del Rio at the same time wounding the firearm's holder.

Charged in the Court of First Instance of Samar with homicide through reckless imprudence, Ramon Mahilum was thereafter convicted and found guilty of this crime, and sentenced to an indeterminate penalty of from four months and one day of *arresto mayor* to one year and eight months of *prisión correccional*, and to indemnify the heirs of the deceased in the amount of ₱2,000 with subsidiary imprisonment in case of insolvency.

Now the defendant appeals from this judgment contending that the lower court erred, (1) in giving full credit to the testimony of prosecution witness Elpidio Castillo, (2) in not giving a correct appraisal and weight to the testimonies of defense witnesses Lucio Ortega and Maximo Masalig, (3) in declaring inverosimil the testimony of accused Ramon Mahilum, and (4) in finding the accused Ramon Mahilum guilty of the crime of homicide through reckless imprudence.

Elpidio Castillo, the only eyewitness aside from the defendant himself gave his version of the incident in this guise:

On March 31, 1946, he was in the house of Maximo Masalig in barrio Pilar, municipality of San Antonio, Province of Samar, together with the accused Ramon Mahilum and the deceased Constancio del Rio who were sitting side by side on a trunk inside the hall of the said house of Maximo Masalig. The deceased was at the right side of the accused. The accused took his revolver from the side pocket of his trousers and said that the barrel of the pistol which he was holding if covered with the palm of the hand would not explode even if it were loaded and the trigger pulled. The arm was an automatic pistol, cal. .45. The accused was holding the pistol with his left hand with the index finger on the trigger. The gun was pointed towards his right. Then the accused covered the mouth of the barrel of the pistol with the palm of his right hand. Instantaneously the pistol exploded. Immediately after the explosion he saw the deceased fell on the floor. The accused placed the pistol on the floor then held his right wrist with his left hand, blood cozing from his right palm. The bullet passed through his palm. The deceased was hit on the left deltoid anterior region. As soon as the deceased fell to the floor he (witness) held him, but he was already dead.

Appellant assails the decision of the court *a quo* for giving credence to the testimony of said witness, although he admitted that when the incident occurred, three persons were only in the living room of his house, namely, the witness in question and the deceased with him. That the

former is the brother-in-law of the deceased, this relationship alone cannot neutralize his truthfulness. The witness is also a close relative to both the defendant and his wife, and neither he nor the deceased had any ill feeling against the defendant or his family. Besides, witness to the commission of an offense are invariably relatives of the victim. (U. S. *vs.* Pagadua, 37 Phil., 90; U. S. *vs.* Monte, 27 Phil., 134.) The trial court relied its findings on Castillo because he "testified frankly and in an straightforward manner," the judge said. His narration at the trial was the same as that given by him to Climaco Castillo and Maximo Kasalig immediately after the happening, and to the chief of police who investigated him after. On the other hand, chief of police Guido having testified that upon receiving the report regarding the incident, he went to the place and investigated Elpidio Castillo and the defendant. He found the latter in his house in critical condition due to the wound that passed through his right palm. The accused then claimed he was not in a position to answer questions, so he could not investigate him, and the only statement he made on that occassion was that the shooting was by mistake.

The defendant testifying for himself, gave the following version of the incident:

He and the deceased Constancio del Rio went to the house of Maximo Masalig to roast meat. While Maximo Masalig was roasting meat, he and the deceased went to the hall of the said house and sat on a trunk. The deceased was at his right. They were talking about boat trips. The deceased told him of their trip to Zumarraga when three unknown persons went up their boat while it was docked. Then the decased told him that an American soldier told him that the best defense when a firearm is directed towards you is to cover the mouth of the barrel with the palm of your hand because it would not explode. The deceased took an automatic pistol, caliber .45 from the pocket of his trousers and said that he was bringing that arm ready for any contingency. The deceased told him to cover the mouth of the barrel of the pistol with the palm of his hand and the gun would not explode even if the trigger were pulled. The deceased demonstrated to him by loading the pistol with a bullet, then covered the mouth of the barrel with his palm and pulled the trigger. To his amazement the gun did not explode. Then the deceased gave the gun to him and told him to try it. He was instructed by the deceased to hold the gun with his left hand and cover the barrel with the palm of his right hand. It was that way so he cover the mouth of the barrel better as his right hand was stronger than the left. Once he had the gun in that position as indicated by the deceased, the latter told him to pull the trigger, but he refused. The deceased,

therefore, placed the thumb of his right hand over the trigger and pulled it himself. The gun exploded. The gun fell to the floor. The deceased fell also face down. Then he noticed that he was wounded on his right palm.

The trial court disbelieved defendant's testimony. The court could not conceive of a bullet in a good condition inside the barrel of a gun that would not explode when the trigger is pulled just because the mouth of the barrel is covered. In fact the gun exploded while it was covered by the palm of his right hand. And that explosion caused the death of Del Rio.

Appellant's contention that the court *a quo* erred in not correctly appreciating the testimony of defense witnesses Lucio Ortega and Maximo Masalig, is untenable. These persons did not witness the incident, therefore their testimony is of no avail.

As to the ownership of the gun, which is of little worth in this case, the evidence shows that it belonged to the defendant. Thus asserted Elpidio Castillo and the widow of the deceased. It was the same gun, said Castillo, that defendant's wife used sometime in February, 1946 when she pursued her husband in the streets. In this connection we agree with the counsel for the people that, assuming arguendo the version given by the defendant to be true, the deceased could not be the one negligent because, as admitted by the defendant himself, Del Rio while demonstrating the impossibility of its firing, held the gun at a 60 degree angle pointed at nobody, so that even if the accused only prevailed upon by the deceased to find out for himself, the accused remains grossly negligent in not taking the necessary precautions by following the example of the deceased in holding the gun at such an angle directed at nobody.

The crucial issue raised by the appellant hinges on the credibility of the witnesses. The Honorable Fidel Fernandez, judge, who tried this case, relied his findings on the testimony of the witnesses for the prosecution. We find no justified motive, upon reviewing the record, to change his findings when the evidence, considered by itself, is clear and convincing. His Honor was, indeed, in a preeminent position to gauge the credibility of the witnesses while on the witness stand. It can scarcely be repeated too often that the judge who tried the case has vastly superior advantages for the ascertainment of truth and the detection of falsehood over the court sitting as a court of review. Hence the well-settled rule that the appreciation of evidence by the trial court should not be disturbed in the absence of any fact palpably misconstrued by him.

We, therefore, conclude with the distinguished judge, that the prosecution proved beyond the shadow of doubt the guilt of the defendant. Through his imprudence, negli-

gence, and carelessness, the accused caused the death of the deceased.

In the absence of any aggravating or extenuating circumstance the penalty, according to article 365, paragraph 1 of the Revised Penal Code, should be imposed in the medium period. Wherefore, the defendant shall serve an indeterminate sentence of four (4) months of *arresto mayor* to one (1) year and eight (8) months of *prisión correccional*, to indemnify the heirs of the deceased in the amount of ₱2,000 with subsidiary imprisonment in case of insolvency which shall not exceed one-third of the principal penalty, and to pay the costs in both instances.

Judgment affirmed, with the modification of the sentence as stated above.

Reyes and *Gutierrez David, JJ.*, concur.

Judgment modified.

[No. 2005–R. November 6, 1948]

SPENCER DAVIS ETC., plaintiff and appellee, *vs.* ANTONIO CHUA CRUZ and I. L. MYERS ETC., defendants and appellants.

1. PLEADING AND PRACTICE; ANSWER; ANSWER "GENERALLY AND SPECIFICALLY DENYING THE ALLEGATIONS" OF COMPLAINT, EFFECT; CASE AT BAR.—It being admitted by the defendants that the furnishing of Associated Press news and dispatches were rendered, the plaintiff is entitled to recover for said services even without a written evidence thereof. By the acceptance and use of the news service there was a tacit consent to its rendition, from which the law will imply a promise to pay (Perez *vs.* Pomar, 2 Phil., 686). The terms of the contract having been pleaded, the defendants admitted its existence by their failure to specifically deny the same. Their allegation that they "generally and specifically deny the allegations of the complaint is merely a general denial constituting an admission of such allegations. The use of the word "specifically" is not sufficient to bring the case out of the scope of section 8, Rule 9, of the Rules of Court, providing that material averments not specifically denied are deemed admitted (Hogar Filipino *vs.* Santos Investment, 2 Off. Gaz., No. 5, p. 493, May, 1943; Dacanay *vs.* Lucero, 42 Off. Gaz., No. 9, p. 2119; Bastano *vs.* Amador, September 18, 1944, R. G. No. 49255). The admission relieved the plaintiff from further proof.

2. ID.; EVIDENCE; STATUTE OF FRAUDS, ITS SCOPE.—The contract sued upon being admitted, by the failure to deny specifically its existence, no further evidence thereof could be required. Moreover, the Statute of Frauds does not apply to contracts already executed (Hernandez *vs.* Andal, G.R. L–273, March 29, 1947; Almirol *vs.* Monserrat, 48 Phil., 67), and the defendants admitted not only the rendition of the service but also payment therefor up to November, 1946.

APPEAL from a judgment of the Court of First Instance of Manila. De Leon, J.

The facts are stated in the opinion of the court.

Jose S. Sarte for appellants.

Domingo H. Soriano for appellee.

REYES, J. B. L., *J.:*

The complaint alleged that the defendants-appellants, as editors and publishers of the newspaper "The Courier," had been furnished with Associated Press news and dispatches from December, 1945, to April 7, 1947; that said defendants had agreed to pay ₱480 per month for such service; that they had in fact paid up to November, 1946, but not for the period extending from December, 1946 to April 7, 1947, being indebted in a total amuont of ₱2,032.

The defendants answered that they "deny generally and specifically the allegations of paragraphs 2, 3, 4, and 5 of the complaint" (admitting the first, concerning residence of the parties), and pleaded, by way of special defense, that there was an erroneous liquidation of the payments made by the defendants, who had fully settled the account; and alleged a counterclaim for attorney's fees.

When the case was called for trial, plaintiff asked for a judgment based on defendant's failure to make a specific denial of the complaint's averments; whereupon the defendants were allowed to submit evidence in support of their special defense. This evidence consisted in the testimony of defendant Antonio Chua Cruz, who denied having entered into a contract to pay for the service, though he admitted that the Courier's first manager, Anden, had such a contract; that (Chua paid the Associated Press more than ₱400 a month for the service, until November, 1946, when the witness ceased as general manager, being replaced by the other defendant, I. L. Myers. In rebuttal, plaintiff testified that there had been a written contract as per model form, Exhibit A; and that news service to defendants was suspended after the first seven days of April, 1947, because of nonpayment of bills, although defendants I. L. Myers, wife of Antonio Chua Cruz and publisher of the Courier, had pleaded for time within which to pay. It appears further from the testimony of plaintiff's clerk that a written contract was left with defendant for signature but apparently was never signed.

The Court of First Instance of Manila, holding that since defendants had profited from the news service it was but proper that they should pay for the same, sentenced defendants to pay jointly and severally the amount due at ₱480 per month, plus legal interest from the filing of the complaint, and costs. Motion for new trial being denied, appeal was taken by the defendants to this Court.

As first alleged error, appellants urge that there was no adequate evidence of the existence of the contract sued upon, the writing being the best evidence and none having been produced. Even without such a writing, however, plaintiff appellee is entitled to recover, it being undenied that the services were rendered. By the acceptance and use of the news service there was a tacit consent to its

rendition, from which the law will imply a promise to pay (Perez *vs.* Pomar, 2 Phil., 686). Payment was in fact made until November, 1946. In the second place, the terms of the contract having been pleaded, the defendants admitted its existence by their failure to specifically deny the same. Their allegation that they "generally and specifically deny the allegations" of the complaint is merely a general denial constituting an admission of such allegations. The use of the word "specifically" is not sufficient to bring the case out of the scope of section 8, Rule 9, of the Rules of Court, providing that material averments not specifically denied are deemed admitted (Hogar Filipino *vs.* Santos Investment, 2 Off. Gaz., No. 5, p. 493, May, 1943; Dacanay *vs.* Lucero, 42 Off. Gaz., No. 9, p. 2119; Bastano *vs.* Amador, September 18, 1944, R. G. No. 49255). The admission relieved the plaintiff from further proof.

The second and last error assigned, premised on noncompliance with the Statute of Frauds, is also unmeritorious. The contract being admitted, by the failure to deny specifically its existence, no further evidence thereof could be required. Moreover, the Statute of Frauds does not apply to contracts already executed (Hernandez *vs.* Andal, G. R. L–273, March 29, 1947; Almirol *vs.* Monserrat, 48 Phil., 67), and the defendants admitted not only the rendition of the service but also payment therefor up to November, 1946. The rate alleged in the complaint to be at ₱480 a month is not only admitted but confirmed by the testimony of Chua Cruz that he used to pay "more than four hundred pesos" a month. The fact that he ceased to manage the business in November, 1946, does not relieve him from liability thereafter, for his wife took over the management, obviously with his knowledge and consent, and continued taking advantage of the news service.

We find no reason to alter the appealed decision. The same is affirmed with costs against appellants.

Gutierrez David and *Borromeo, JJ.*, concur.

Judgment affirmed.

[No. 2052–R. November 6, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* LUIS H. PARAS, defendant and appellant

CRIMINAL LAW; DAMAGE TO PROPERTY THROUGH RECKLESS IMPRUDENCE; PHRASE "WHEN THE EXECUTION OF THE ACT COVERED BY THIS ARTICLE" (ARTICLE 365, REVISED PENAL CODE), CONSTRUED.—Construing the phrase "when the execution of the act covered by this article" in article 365 of the Revised Penal Code, it is obvious that it refers to the reckless and imprudent act of the offender, in the event that such act should only result in damage to property irrespective of the amount of the damage caused. The spirit of the law is to the effect that the act of this offender is the one to determine the character or nature of the

offense, and not the amount of the damage. Thus, if, as in the present case, the accused, according to the information, was reckless and imprudent, then the act charged falls under the third paragraph. If the damage, however, was due only to simple imprudencc or negligence, it falls under the fourth paragraph. The ruling in the case [People *vs.* Mosanto, 40 Off. Gaz., (12 Supp.) 135], cited by the appellant is not controlling in the case at bar. Besides it is not binding, it being merely an *obiter dictum.*

APPEAL from a judgment of the Court of First Instance of Manila. De Leon, J.

The facts are stated in the opinion of the court.

Sevilla, Aquino & Paras for appellant.

Assistant Solicitor-General Kapunan, Jr. and *Solicitor Alejandro* for appellee.

BORROMEO, *J.:*

On May 2, 1947, a Buick automobile carrying license No. 500 owned by Ricardo Lacson and driven by Aquilino Garrison, while running along the driveway towards the direction of the Sta. Cruz bridge, City of Manila, collided in front of the Bureau of Posts building with a jeepney carrying No. T–3001 driven by Luis H. Paras, and as a result of the impact, the Buick car was damaged.

Subsequently, Luis Paras faced charges in the Manila Court of First Instance, for damage to property through reckless imprudence, and was arraigned, tried and found guilty of the offense charged, and sentenced to pay a fine of ₱125, to indemnify the car's owner in the amount of ₱125, with subsidiary imprisonment in case of insolvency, and to pay the costs.

From this judgment the defendant appeals to this Court on the ground that the court *a quo* committed errors: (1) in not dismissing the information which does not allege facts constituting a crime; (2) in giving credit to the testimonies of Aquilino Garrison and Pat. J. Marzan; and (3) in not acquitting the accused due to reasonable doubt.

As to the first alleged error of the court *a quo,* counsel for appellant avers that the act imputed to defendant Luis H. Paras is not punishable by our laws, for article 365 of the Revised Penal Code does not penalize light felony of malicious mischief committed through reckless imprudence. The third paragraph of this article, he contends, in speaking of "the act covered by this article," refers to acts penalized in the last first and second paragraphs; such acts are grave and less grave felonies committed through reckless or simple imprudence, e. g., the acts penalized in article 329, paragraphs 1 and 2; the third paragraph of article 365 cannot possibly refer to an act which had it been intentional would constitute a light felony for this is not the act covered by the preceding paragraphs. To support this contention, he cited the case of People *vs.* Mosanto, 40 Off. Gaz. (12th Supp.), 135.

To clarify this point, it is deemed proper to recall that the information alleges that the defendant "being the driver and person in charge of jeepney plate No. T–3001, did then and there wilfully and unlawfully manage, drive and operate * * * in a reckless, negligent and imprudent manner * * * said car to pull out of and move from the parking position, thus causing by negligence, imprudence and lack of precaution the said jeepney * * * to bump against and hit another vehicle * * * belonging to one Ricardo Lacson, damaging the latter car in the amount of ₱125 * * *."

As it can be noticed, the information which alleged sufficient cause of action imputed the defendant an act falling under the third paragraph of article 365 which says:

"When the execution of the act covered by this article shall have only resulted in damage to the property of another, the offender shall be punished by a fine ranging from an amount equal to the value of said damages to three times such value, but which shall in no case be less than 25 pesos."

In other terms, according to the information, the damage caused on the Buick car was due to the reckless imprudence of the defendant, and it was not due to simple imprudence or negligence which is punishable under the fourth paragraph.

Construing the phrase "when the execution of the act covered by this article" quoted above, it is obvious that it refers to the reckless and imprudent act of the offender, in the event that such act should only result in damage to property irrespective of the amount of the damage caused. The spirit of the law is to the effect that the act of this offender is the one to determine the character or nature of the offense, and not the amount of the damage. Thus, if, as in the present case, the accused, according to the information, was reckless and imprudent, then the act charged falls under the third paragraph. If the damage, however, was due only to simple imprudence or negligence, it falls under the fourth paragraph. The ruling in the case cited by the appellant is not controlling in the case at bar. Besides it is not binding, it being merely an *obiter dictum*.

With regards to the second assignment of errors, the issue raised by the appellant involves the credibility of the witnesses. Here are the findings of the court *a quo*:

"Aquilino Garrison, the driver of Buick car No. 500, stated among other things that he was driving along the driveway, which is a one way street, in front of the Bureau of Posts building, towards the direction of Sta. Cruz Bridge; that he was at the time driving slowly; that along the driveway there were vehicles parked on both sides; that when he was about to pass jeepney No. T–3001 driven by the accused Luis Paras, the latter suddenly started his vehicle to move away from its parking place, and in so doing said jeepney struct the left front mudguard of Buick No. 500; that as a result of the impact the left front mudguard of the Buick car was dented towards the inside; and that he and the accused were taken to the police station for investigation.

"The accused Luis Paras, on the other hand, alleged as his defense that when he started to drive away his jeepney from its parking place, he made a sign by raising his left hand on the left side of the vehicle; that he could not make said sign on the right hand side of his jeepney as it is a left hand drive; and that although he could not make a sign on the right hand side he looked at the back and when he saw that there was no car coming from behind, he proceeded to drive away the jeepney from its parking place, but, all of a sudden, the Buick car appeared and struck the front right bumper of his jeepney. The bumper of his vehicle was damaged.

"Pat. J. Marzan, an investigator of traffic accidents of the Traffic Division of the Manila Police Department, declared that he saw both vehicles after the accident and that he found out that the Buick car was damaged on the left front mudguard as indicated by Aquilino Garrison in the sketch Exhibit A. This investigator did not find any damage in the jeepney of the accused. He confirmed the fact that the place where the accident happened is a one-way street, that is, the flow of traffic is from the direction of the Jones Bridge towards Sta. Cruz Bridge. He also stated that it was incumbent upon the accused in this particular case to take more care and precaution than those that were passing along the passageway as he (the accused) was then coming out from his parking place. This witness further stated that the accused made an improper start in violation of traffic rules and regulations. * * * This conclusion of patrolman Marzan is in accordance with the following provisions of Ordinance No. 2646 of the Municipal Board:

Rule III, paragraph 2

"In turning while in motion or in starting to turn from a standstill or leaving from the parking place, a signal shall be given by raising the hand or dummy hand horizontally in the direction of the turn.

"In cases of damages caused by collision of motor vehicles, it is important to observe the appearance of the damage caused. In this particular case the dent of the mudguard of the Buick car after the accident was towards the inside, which goes to show that it was bumped by another vehicle. The accused alleged that it was the Buick car that bumped the bumper of his jeepney. If this allegation of the accused were true, the left front bumper and the tip of the left front mudguard of the Buick car should have been damaged. The investigator, patrolman Marzan, did not find any other damage of the Buick car except the dent on the left front mudguard as shown in Exhibit A. The allegation of the accused that there was a long scratch on the left front mudguard of the Buick car is not corroborated by any witness. Besides being uncorroborated, it is untenable on the ground that if the Buick car was the one which bumped the jeepney, the damage would not be a long scratch on the side of the left front mudguard. The bumper and the front end of the left mudguard of the Buick car should have been damaged. The accused further alleged that there was another policeman who had seen the damage of the car, but when asked if he had made efforts to locate said policeman in order to be used by him as a witness, he answered in the negative. He also admitted during the trial that despite the fact that he was not at fault and that his jeepney was damaged, he did not file any complaint against the chauffeur of the Buick car.

"There is nothing to show in the records that patrolman J. Marzan was partial in his actuations. It is presumed that he was only complying with his duties as police officer when he testified that the jeepney of the accused did not suffer any damage and that there was no scratch on the left fender of the Buick car as alleged by accused."

We cannot see any reason why these findings should be reversed since they were based on the testimonies of witnesses whose truthworthiness are plainly justified on the record. The driver of the Buick car, Aquilino Garrison, and the defendant who was driving the jeepney, were the only eyewitnesses of the accident. Aquilino's testimony was corroborated by patrolman Jesus Marzan, a member of the Accident Investigation Section, Traffice Division of the Manila Police Department.

On the other hand, the trial court disbelieved defendant's version of the incident. He claimed, in the first place, that his car was likewise damaged, but the investigator asserted that he did not find any sign of damage on the jeepney, thus substantiating Aquilino's assertion that when he was about to pass the jeepney driven by the defendant, the latter suddenly started his vehicle to move away from its parking place thus striking the left front mudguard of the Buick. He claimed, further, that the Buick car was running at a high speed, and Aquilino declared the contrary. If the Buick was really running at a high speed, the damage would have been greater, and the jeepney would have also had some damage.

Appellant contends that the failure of the prosecution to present Mrs. Ricardo Lacson who happened to be the occupant of the Buick car on that occasion, raises a presumption that her testimony, had she been placed on the witness stand, would be unfavorable to the prosecution. Of course, it depended upon the prosecution to present her or not as witness, (People *vs.* Juliada, 54 Phil., 485), but if her testimony would only be corroborative, the failure to present her as witness will not give rise to an unfavorable presumption against the prosecution. (U. S. *vs.* Dinola, 37 Phil., 797.)

As the issue raised by the appellant hinges primarily on the credibility of the witnesses, the well settled rule that the appreciation of evidence by the trial court should not be disturbed in the absence of any fact palpably misconstrued by him, is to be observed in the present case.

Judgment affirmed, with costs to appellant.

Reyes and *Gutierrez David, JJ.*, concur.

Judgment affirmed.

[No. 1949–R. November 12, 1 48]

DOMINGO OTARRA, plaintiff and appellee, *vs.* JUAN M. CENIZA and CEFERINO MABANAG, defe1 dants. JUAN M. CENIZA, defendant and appellant.

OBLIGATIONS AND CONTRACTS; INTERPRETATION 01 CONTRACTS; "PACTO DE RETRO" SALE, INTERPRETED AS ONE OF LOAN SECURED BY MORTGAGE; CASE AT BAR.—Even assuming that the contract in

question is, in form, a *pacto de retro* sale, and taking for granted that it was the defendant himself who requested the lawyer to prepare the said contract in the form of *pacto de retro* sale, these facts are not enough to justify the conclusion that the real transaction was one of sale in view of other circumstances, to wit: (1) the plaintiff imposed the condition that the document should be made in the form of *pacto de retro* and out of necessity defendant had to accept such condition; (2) the inference from appellant's letter (Exhibit B) that due to his belief that he still owed the appellee, he consented to make further payments on account of his indebtedness "until some other occasion or settlement"; the receipts (Exhibits 1 to 26), which show that the different amounts paid by the appellant to the appellee were "on account of his indebtedness"; that from December 3, 1938 to February, 1941, the appellee did not take any appropriate action to consolidate his ownership. Judging from the foregoing circumstances and others appearing on record, the contract at bar is not a *pacto de retro* sale but one of loan secured by mortgage.

APPEAL from a judgment of the Court of First Instance of Cebu. Macadaeg, J.

The facts are stated in the opinion of the court.

Eriberto Seno and *Sotto & Sotto* for appellant.
Kintanar, Florido & Clavano for appellee.

DIZON, *J.:*

Domingo Otarra commenced this action in the Court of First Instance of Cebu originally against Juan M. Ceniza and Ceferino Mabanag to secure judgment ordering said defendants to vacate lot No. 6099 of the cadastral survey of Opon, Cebu, declaring him to be the absolute owner thereof, and compelling said defendants to pay him ₱25 as monthly rent from April 16, 1941 besides damages in the sum of ₱500 and costs.

In his answer Ceniza denied specifically the allegations made in paragraphs 2 to 7 of the complaint and further alleged, as a special defense, that the *pacto de retro* sale upon which plaintiff based his action was but a mere real estate mortgage executed by him to secure the payment of a loan of ₱500, that he had never agreed to occupy the property in question as a mere tenant and that he had paid to the plaintiff from December 1938 to April 16, 1941 the sum of ₱481 as interests on the aforesaid loan at the rate of 5 per cent per month on the lowest monthly balance, and the sum of ₱569 on account of the principal. By way of counterclaim Ceniza further alleged "that he had overpaid the plaintiff the sum of ₱69.75," which amount the plaintiff had refused to refund to him. Consequently he prayed for judgment against the plaintiff for the return of said amount and for the execution of a "deed of resale or release of the land described in his complaint."

On the day of the trial, upon motion of the plaintiff, the defendant Mabanag was excluded from the complaint, the

parties agreeing that the northern half of the land described in the complaint really belong to him. After due trial the court below rendered judgment as follows:

"In view of the foregoing, the court hereby renders judgment in favor of the plaintiff and against the defendant Juan M. Ceniza as follows:

'1. That the contract had between the plaintiff and the defendant Juan M. Ceniza was that of a *pacto de retro* sale:

'2. That defendant Juan M. Ceniza having failed to exercise his right of redemption within the stipulated period, plaintiff Domingo Otarra became the absolute owner of the portion of land in question;

'3. That the defendant Juan M. Ceniza is hereby ordered to vacate the portion of land in question and to pay the plaintiff the rentals in arrears at the rate of ₱25 a month from April 16, 1941 up to the time he vacates the premises;

'4. Defendant Juan M. Ceniza is hereby ordered to pay the costs of the proceedings'."

In the present appeal the appellant contends that the lower court committed the following errors:

I

"The trial court erred in holding that the plaintiff-appellee is the absolute owner of the land in question.

II

"The trial court erred in holding that the contract had between the plaintiff-appellee and the defendant-appellant was a *pacto de retro* sale.

III

"The trial court erred in finding that an agreement of lease of the land in question was entered into by and between the plaintiff-appellee and the defendant-appellant, and in ordering the latter to pay ₱25 as monthly rent from April 16, 1941 up to the time he vacates the premises.

IV

"The trial court erred in dismissing the counterclaim of the defendant-appellant for the sum of ₱69.75, and in not ordering the plaintiff to execute a deed of resale of the land."

It appears that on November 5, 1938, for and in consideration of the sum of ₱500, the appellant executed in favor of the appellee the *pacto de retro* sale Exhibit A, the agreement being that the repurchase was to be made within two years from the date of the contract. The appellee contends that the parties further agreed orally that the appellant was to continue occupying the property as tenant at a monthly rent of ₱25. This said appellant denies claiming that the real transaction had between him and the appellee was merely one of loan of the sum of ₱500 secured by a mortgage; that the monthly sum he had agreed to pay to the appellee was in payment of interests at the rate of 5 per cent per month on the unpaid monthly balance claiming in this connection to have made payments evidenced by several receipts now in evidence as Exhibits 1 to 26.

The main issue, therefore, is whether or not the public document Exhibit A as a real *pacto de retro* sale or was

intended to be a mere real estate mortgage to secure the payment of a loan of ₱500. Upon this question the lower court found in favor of the appellee, but after a careful review of the evidence we have come to the conclusion that such finding is erroneous and that appellant's contention must be sustained.

There is no question that the document Exhibit A is, in form, a *pacto de retro* sale. We may even take for granted that it was the appellant himself who requested Attorney Duterte to prepare the contract in the form of a *pacto de retro* sale. All this, however, is not enough to convince us that the real transaction was one of sale in view of other circumstances appearing of record.

The fact that it was the appellant himself who had requested Attorney Duterte to prepare the contract in its present form can be perfectly reconciled with his theory in view of the explanation he has given regarding this apparently strong circumstannce against him. According to him, the appellee imposed the condition that the document should be made in the form of a *pacto de retro* sale and inasmuch as he was in need of money he had to accept such condition. Hence his request to Attorney Duterte. It is worthy to note that although Attorney Duterte testified to the effect that it was the appellant who had requested him to prepare the *pacto de retro* sale, there is nothing in his testimony to contradict the explanation thus given by the appellant. We, therefore, believe that Attorney Duterte's testimony was given undue weight by the trial court.

The letter Exhibit B, on the other hand, can hardly bear any decisive influence in the decision of this case. It merely shows that the appellant had agreed to allow the appellee to enjoy the *fruits* of the property in question "until some other occasion or settlement." He did not, therefore, acknowledge that the contract Exhibit A was a real *pacto de retro* sale. Neither did he admit that the appellee had already become the owner thereof. To the contrary, what may be inferred from said letter is that the appellant, in the belief that he still owed the appellee, consented to make further payments on account of his indebtedness "until some other occasion or settlement."

Appellant's contention that his agreement with the appellee was one of loan secured by mortgage is strongly corroborated by the receipts Exhibits 1 to 26. All of them show that the different amounts paid by the appellant to the appellee were on account "of his indebtedness" (Exhibit 1), "paid to me for his debt" (Exhibits 2, 3, 4), "in payment of his indebtedness to me" (Exhibits 5, 6, 7, 8, 9, 10, 11), "in payment of his debt for the months of October and November for the year 1939." (Exhibit 12), "paid to me for his indebtedness" (Exhibits 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25 and 26). All these receipts are obviously repugnant to and inconsistent with the theory

that the document Exhibit A was a true sale with *pacto de retro*.

It is true, of course, that the appellee claims that he is illiterate, that all the aforesaid receipts were prepared by a daughter of the appellant and that he merely thumb-marked them, but this is not enough to destroy the presumption that he knew the contents and wording thereof or at least that he had ample opportunity to know such contents and wording because the first receipt, Exhibit 1, was issued on December 3, 1938, while the last, Exhibit 26, was issued on February, 1941, during all which time he had said receipts in his possession. Had his agreement with the appellant been a real sale he would have certainly refused to accept such receipts, or, at least, he should have taken some appropriate action regarding the same between 1938 to 1941.

Appellee's claim that the appellant had agreed orally to lease the property subject matter of Exhibit A at a monthly rent of ₱25 is hard to believe. There is, in the first place no evidence in the record free from bias to establish the alleged lease. In the second place, it is improbable that the appellant, after parting with his property for only ₱500, would lease the same at a monthly rent of ₱25, or for a total of ₱300 per year. It is easier to believe that, in view of his financial difficulties, he secured from the appellee a cash loan in the sum of ₱500 although he had to mortagage a parcel of land and pay 5 per cent per month interests on the unpaid monthly balances. In this connection it is worthy to note that each of the first four receipts mentioned heretofore evidence payments of ₱25 or exactly 5 per cent of the capital of ₱500, while Exhibit 5 was issued for the sum of ₱35.75, of which ₱25 was to pay the interests for March, 1939 and the balance of ₱10.75 was applied to the April interests. Exhibit 6 evidences a payment of ₱39, of which ₱14.25 were to be added to the ₱10.75 included in the receipt Exhibit 5, to complete the ₱25 interests for April, while the balance of ₱24.74 was applied to the payment of May interests. Exhibit 7 represents a payment of ₱40, of which ₱0.25 was to be added to the amount of ₱24.75 already paid on account of the May interests, while the balance was to be applied as follows: ₱25 for the payment of the June interests and ₱14.75 as partial payment on the capital of the loan. The subsequent receipts appear to have been issued for amounts ranging from ₱15 to ₱40, except the receipt Exhibit 14 which is for ₱300, and represent payments of monthly interests on the unpaid monthly balances at the same rate of 5 per cent per month and partial payments on account of the capital of the loan.

The appellee claims that the ₱300 mentioned in the receipt Exhibit 14 were in payment of a loan in that amount he had given the appellant when the latter needed money

for his "guano" business. This contention is untenable. It seems improbable for the appellee to have given such loan without requiring the appellant to sign a promissory note or, at least, a receipt. Furthermore, the appellee could not even give the precise date when the loan was given, and the only other evidence supporting his claim is that of Candida Flores, a niece of his own wife, who signed the receipt Exhibit 14 as witness. We have searched the record in vain for something to show that the relations between the appellant and the appellee were such as to make it likely for the latter to give the former a loan of ₱300 without the formality of, and the natural feeling of security afforded by some sort of a written contract. To the contrary, it appears clearly that, whenever money passes from one party to another, the corresponding written contract or receipts were duly executed. Upon this particular question we believe, therefore, that the testimony of the appellant, corroborated by that of Julia Parawan, who also signed Exhibit 14 as witness, and the contents of the receipt aforesaid, shows quite convincingly that the ₱300 referred to therein were paid by the appellant, through his daughter, as an amortization on the capital of the loan subject matter of the contract Exhibit A.

All the payments evidenced by these receipts amount to ₱1,000.75. According to the agreement of the parties regarding the payment of monthly interests on the unpaid monthly balances at the rate of 5 per cent, the appellant should have paid the sum of ₱431 in that concept. This amount added to the ₱500 necessary to pay the capital of the loan would give the total sum of ₱931, the result being that the appellant really paid the appellee ₱69.75 more than he should have paid.

Reasoning out its decision the lower court says that the plaintiff, being an illiterate man, could not have deceived the defendant who is very intelligent. The trial court apparently missed the point material to appellant's contention. The latter never made the claim that he had been *deceived* by the appellee. His contention was that he had asked the appellee for a loan of ₱500, that the latter gave him the loan but upon the condition that interests thereon shall be paid as already mentioned before and provided further that the corresponding written contract be drafted in the form of a *pacto de retro* sale, and finally, that he had to agree to all this out of necessity.

We are of the opinion, therefore, and so hold, that the appealed judgment should be, as it is hereby reversed and another should be entered dismissing appellee's complaint and sentencing the latter to pay the appellant the sum of ₱69.75, subject matter of his counterclaim, and the costs.

Concepcion and *De Leon, JJ.*, concur.

Judgment reversed.